

PERIODICAL ROOM  
GENERAL LIBRARY  
UNIV. OF MICH.

# SOUTHWESTERN QUARTERLY

VOL. III

MAY 1911

Editor

F. M. COAN

University of Texas

Members of the Editorial Board

F. F. BLACHLY, University of Texas

C. F. COAN, University of Texas

M. S. HANDMAN, University of Texas

D. Y. THOMAS, University of Texas

G. P. WYCKOFF, University of Texas

CONTENTS

THE PHILOSOPHY OF JUSTICE REVISITED

THE ECONOMIC BASIS OF CHINESE SOCIETY

DIVISION OF LATIN-AMERICAN AREA

THE FIFTH PAN-AMERICAN CONFERENCE

NEWS AND NOTES

NEWS AND NOTES

NOTES FROM ARKANSAS, OREGON

BOOK REVIEWS

INDEX TO VOLUME III

PUBLISHED BY

THE SOUTHWESTERN

ASSOCIATION

ATLANTA, GA.

"Entered as second-class matter  
Austin, Texas, under

# The Southwestern Political Science Association

## PRESIDENT

C. B. AMES, Oklahoma City, Oklahoma

## FIRST VICE-PRESIDENT

GEORGE B. DEALEY, Dallas, Texas

## SECOND VICE-PRESIDENT

F. F. BLACHLY, Norman, Oklahoma

## THIRD VICE-PRESIDENT

D. Y. THOMAS, Fayetteville, Arkansas

## SECRETARY AND TREASURER

F. M. STEWART, Austin, Texas

---

## EXECUTIVE COUNCIL

PRESIDENT C. B. AMES, Oklahoma City, Oklahoma

EX-PRESIDENT A. P. WOOLDRIDGE, Austin, Texas

EX-PRESIDENT GEORGE VAUGHAN, Little Rock, Arkansas

VICE-PRESIDENT GEORGE B. DEALEY, Dallas, Texas

VICE-PRESIDENT F. F. BLACHLY, Norman, Oklahoma

VICE-PRESIDENT D. Y. THOMAS, Fayetteville, Arkansas

EDITOR OF QUARTERLY, H. G. JAMES, Austin, Texas

SECRETARY AND TREASURER F. M. STEWART, Austin, Texas

ELECTED MEMBERS { E. T. MILLER, Austin, Texas  
J. P. COMER, Dallas Texas.

THE SOUTHWESTERN POLITICAL SCIENCE QUARTERLY is supplied to all members of the Southwestern Political Science Association. The subscription price of the QUARTERLY is two dollars a year. Applications for membership, orders for the QUARTERLY and remittances should be addressed to F. M. Stewart, Secretary-Treasurer of the Association, University Station, Austin, Texas.

Correspondence with reference to contributions to the QUARTERLY should be addressed to F. M. Stewart, Editor in Charge, University Station, Austin, Texas.

# THE SOUTHWESTERN POLITICAL SCIENCE QUARTERLY

VOL. III

MARCH, 1923

No. 4

*The editors disclaim responsibility for views expressed by contributors  
to THE QUARTERLY*

---

---

## THE PHILOSOPHY OF JUSTICE HOLMES ON FREEDOM OF SPEECH\*

TULLY NETTLETON  
*University of Oklahoma*

To Justice Oliver Wendell Holmes the law is a philosophy, and yet not a philosophy which cloisters itself in things abstract but which exhibits itself in things concrete. This has been recognized by such authorities as Viscount Haldane,<sup>1</sup> Dean John H. Wigmore,<sup>2</sup> Professor Felix Frankfurter,<sup>3</sup> and Professor James H. Tufts.<sup>4</sup> In their writings are to be found numerous intimations that the opinions of Justice Holmes are not mere adjudications of individual and uncorrelated cases, but are applications drawn from an already formulated universal philosophy of law, a whole corpus such as the learned justice confessed he longed to be the author of, when he spoke to the Suffolk Bar thus deprecatingly of his own record of opinions:

A thousand cases, when one would have liked to study to the bottom and to say his say on every question which the law ever has presented, and

---

\*Paper read at the Third Annual Meeting of the Southwestern Political Science Association, Norman, Oklahoma, March 26, 1922.

<sup>1</sup>*New Republic*, Vol. 26, p. 34, March 9, 1921.

<sup>2</sup>29 *Harvard Law Review*, 601.

<sup>3</sup>29 *Harvard Law Review*, 683.

<sup>4</sup>*American Bar Association Journal*, Vol. 7, p. 362, July, 1921.

then to go on and invent new problems which should be the test of doctrine, and then to generalize it all and write it in continuous, logical, philosophic exposition, setting forth the whole corpus with its roots in history and its justifications of expedience real or supposed!<sup>5</sup>

Even earlier he had revealed his conception of a much larger philosophy of which the philosophy of the law was but a constituent. In 1896 he had written:

If the world is a subject for rational thought it is all of one piece; the same laws are found everywhere, and everything is connected with everything else; and if this is so, there is nothing mean, and nothing in which may not be seen the universal law.<sup>6</sup>

For Justice Holmes, says Viscount Haldane, "knowledge is an entirety and law is but one phase of the entirety of the whole system of human knowledge."<sup>7</sup>

Such are the authorities which encourage us to look into the legal opinions of Justice Holmes for a "coherent body of constitutional law"<sup>8</sup> on such a subject as freedom of speech.

### *Freedom of Speech as a Federal Question*

It is notable that out of thirteen decisions touching the First Amendment to the federal constitution handed down during Holmes's tenure he has written opinions, either for the majority or on the dissent on all but four.<sup>9</sup>

Foremost of the freedom of speech cases in which he has spoken for the whole bench is that of *Shenck v. United*

<sup>5</sup>Speeches by Oliver Wendell Holmes (Boston: Little, Brown & Co., 1918), p. 83; Collected Legal Papers by Oliver Wendell Holmes (New York: Harcourt, Brace and Co., 1920), p. 245.

<sup>6</sup>Collected Legal Papers, p. 159.

<sup>7</sup>See note 2, *supra*.

<sup>8</sup>Frankfurter, 29 *Harvard Law Review*, 684.

<sup>9</sup>Cases in which Holmes wrote no opinion but concurred with the majority of the court are these: *United States v. Williams* (194 U. S. 279, 48 L. Ed. 979, 24 Sup. Ct. 719) upholding the constitutionality



*States*,<sup>10</sup> which was the first decision to sustain the constitutionality of the Espionage Act of June 15, 1917. The case was a clear one of incitement to resist the draft. Shenck and others had mailed circulars to men who had passed the exemption boards, urging them in impassioned language to assert their rights against conscription as against an unconstitutional despotism.

"We admit," says Justice Holmes, "that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

In this he has stated a valuable rule in law. He has placed the test of criminality upon "clear and present danger" of "substantive evils," evidently meaning by such evils not merely the harboring of heretic thoughts but the actual interference with some power vested in Congress

---

of the Immigration Act of March 3, 1903, by which alien anarchists are excluded. *Lewis Publishing Co. v. Morgan* (229 U. S. 288, 57 L. Ed. 1190) holding that the additional conditions upon the right to enjoy second-class mail privileges, imposed by the Postoffice Appropriation Act of August 24, 1912, paragraph 2, which required statements of circulation and ownership and the labeling of all paid reading matter "Advertisement" are not repugnant to the freedom of the press clause. *Mutual Film Co. v. Industrial Commission of Ohio* (236 U. S. 230, 59 L. Ed. 552) upholding censorship of motion picture films. *Gilbert v. Minnesota* (254 U. S. 325, 65 L. Ed. 287, 41 Sup. Ct. 125) upholding the constitutionality of a state statute making it unlawful to advocate or teach that men should not enlist in the army, navy or state militia, or that citizens should not aid the United States in carrying on war with its public enemies.

<sup>10</sup>249 U. S. 47, 63 L. Ed. 470.

by the Constitution as the war power is.<sup>11</sup> The justice added however:

When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right.

This is a statement of the interest of society which calls for unimpeded action when the whole social body has committed its energies to one course. But it will be seen that he construes this general interest as one which entitles society, not to stop all questioning of its action, but only to put out of its way any actual impediment of its action. The temporary interest does not negative the permanent interest which society has in the free dissemination of ideas.

Holmes probably intended that this sentence should enforce the point that war was a circumstance which made the dangerousness of Shenck's utterances more clear and immanent, but not that it should give any weight to the sophistry, once suggested, that the First Amendment was suspended by the existence of war.

That Holmes did not intend to make this case a precedent for promiscuous prosecutions is well shown in his dissenting opinion in *Abrams v. United States*.<sup>12</sup> It was in this dissent that he stood out for the vital distinction between mere tendency to incite and actual incitement.

The circulars on which the Abrams indictments were based were printed by an isolated, penniless, and perhaps witless group of five young Russian malcontents. They contained the usual "tall talk" (Holmes) to the "workers of the world," signed "The Revolutionists" and "The Rebels," maligning President Wilson and capitalism for interference in soviet Russia and exhorting workers to

---

<sup>11</sup>For a comprehensive analysis of the Abrams case and other Espionage Act cases, see Chafee, *Freedom of Speech* (New York: Harcourt, Brace & Co., 1920), pp. 87-106, 148-158.

<sup>12</sup>250 U. S. 616, 63 L. Ed. 1173.

leave munition plants since there they might be making bullets and bayonets not for the Germans but for their fellow workers in Russia.

Holmes admitted that the leaflets did urge curtailment of production, which was the only one of the four counts upon which Justice Clarke for the majority seriously attempted to justify the verdict of the jury. "But," Holmes added, "to make the conduct criminal, that statute requires that it should be done 'with intent by such curtailment to cripple or hinder the United States in the prosecution of the war.'" And it seemed to him that no such intent had been proved. He insisted that the words of the statute requiring intent must be taken "in a strict and accurate sense."

Nothing is retracted that he said in the *Shenck case* or in the *Frohwerck case*, which intervened, as to the validity of the statute, but the vital point he contends for is that the statute is not to be carried by construction beyond the test he laid down in the *Shenck case*, the "clear and present danger" of "substantive evils that Congress has a right to prevent." The crux of his dissent is that the test merely of the *tendency* of the words used is not good.

This has been analyzed as an application to espionage cases of the common law rule of liability for incitement to crime.<sup>13</sup>

"It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion," Holmes declared in *Abrams' case*. "Congress certainly cannot forbid all effort to change the mind of the country."

So after stating his view that the leaflets were aimed only to aid the Russian revolution and not to provoke resistance to the United States in its war with Germany, he observes:

Even if I am technically wrong, and enough can be squeezed from these poor and puny anonymi-

<sup>13</sup>29 *Yale Law Journal*, 337, and Chafee, *Freedom of Speech*, pp. 89, 155.

ties to turn the color of legal litmus paper, . . . the most nominal punishment seems to me all that possibly could be inflicted, unless the defendants are to be made to suffer not for what the indictment alleges, but for the creed that they avow—a creed that I believe to be the creed of ignorance and immaturity when honestly held, . . . but which . . . no one has a right even to consider in dealing with the charges before the court.

Now just what, it is logical to ask, were the differences which made Justice Holmes decide for conviction in the *Shenck case* and for release in the *Abrams case*?

They were these: Shenck counselled directly resistance to the draft, enacted under one of the war powers of Congress. Abrams only incidentally and in an indefinite way called for a strike while arguing against intervention in Russia, a country with which we were not at war. Shenck mailed his circulars directly to registered men. Abrams scattered his leaflets at random on the streets of New York City. Shenck therefore showed an intent and an attempt to obstruct a war measure. Abrams showed no such intent unless it were a transferred intent or a culpable negligence, and his attempt, if it was one, was as pusillanimous as the attempt of a man to accomplish the derailment of a train by showing children how to lay crossed nails on the track for the car wheels to flatten into "scissors."

It was, in the words of Holmes, "a question of proximity and degree." The proximity and degree of crimes for which men were being brought before the court had been growing point by point more remote from the time of the Shenck case down to the Abrams turning point.

The case of *Frohwerck v. United States*,<sup>14</sup> immediately following that of Shenck, was a more doubtful case than the first, as Justice Holmes admitted. A more complete record might have shown the defendants justified in printing the articles they printed in their *Missouri Staats-Zeitung*, he intimated.

"But we must take the case on the record as it is," he

---

<sup>14</sup>249 U. S. 204, 63 L. Ed. 561.

said, "and on that record it is impossible to say that it might not have been found that the circulation of the paper was in quarters where a little breath would be enough to kindle a flame, and that the fact was known and relied upon by those who sent the paper out."

Most of the justice's argument in this case was directed not to the support of this prosecution but to the support of the Espionage Act in general. The meat of his argument is as follows:

The First Amendment, while prohibiting legislation against free speech as such, cannot have been, and obviously was not, intended to give immunity for every possible use of language. . . . We venture to believe that neither Hamilton nor Madison, nor any other competent person then or later, ever supposed that to make criminal the counselling of a murder within the jurisdiction of Congress would be an unconstitutional interference with free speech. . . .

A conspiracy to obstruct recruiting would be criminal even if no means were agreed upon specifically by which to accomplish the intent. It is enough if the parties agreed to set to work for that common purpose. . . . Intent to accomplish an object cannot be alleged more clearly than by stating that the parties conspired to accomplish it.

On the heels of the *Frohwerck* case came that of Eugene V. Debs. "Great cases, like hard cases, make bad law," Holmes once remarked.<sup>15</sup> Here was a case that was both great and hard. The elements of intent and "clear and present danger" which had made the *Shenck* conviction clear, had in this one nearly reached the vanishing point. The element of the exempted general topic which should have overthrown the *Abrams* conviction was only beginning to appear.

"The main theme of the (Debs) speech was socialism, its growth, and a prophecy of its ultimate success," wrote

---

<sup>15</sup>*Northern Securities Co. v. United States*, 193 U. S. 400, 48 L. Ed. 726.



Holmes in sustaining the Debs conviction.<sup>16</sup> With that we have nothing to do, but if a part or the manifest intent of the more general utterances was to encourage those present to obstruct the recruiting service, and if in passages such encouragement was directly given, the immunity of the general theme may not be enough to protect the speech."

But Professor Chafee of Harvard criticizes the justice's opinion in this manner:

If the Supreme Court had applied this same standard of "clear and present danger" to the utterances of Eugene V. Debs, it is hard to see how he could have been held guilty. The test is not mentioned, however, but Justice Holmes is willing to accept the verdict as proof that actual interference with the war was intended and was the proximate effect of the words used. It is regrettable that he should have felt unable to go behind a verdict which had been found without any reference to the danger of the utterances. The point is that Judge Westenhaver did not instruct the jury according to the Supreme Court test at all, but allowed Debs to be found guilty, in Justice Holmes' words, because of the "natural *tendency* and reasonably probable effect" of his speech, and gave a fairly wide scope to the doctrines of indirect causation and constructive intent, so that the defendant could have been and probably was convicted for an exposition of socialism, merely because the jury thought his speech had a tendency to bring about resistance to the draft.<sup>17</sup>

In defense of Holmes's statement, it may be maintained that if the intent to encourage persons to resist the draft was "manifest," the court did not need to analyze the actual words of the speech, one by one, for "clear and present danger," but could see without that test that seditious encouragement had been given directly enough and strongly enough to give ground for the conviction. The jurist may justifiably have reasoned that Debs's intention to cloak dan-

<sup>16</sup>Debs v. United States, 249 U. S. 211, 63 L. Ed. 566.

<sup>17</sup>Chafee, *Freedom of Speech*, pp. 90-91.



gerous words in a permissible general theme, Debs's knowledge, such as any reasonable man in his place would have had, that his disguised words would have an inciting effect, and Debs's eminence as a leader of his faction all would combine to supply the clear and present danger. To have reasoned thus, Holmes undeniably embraced "reasonable and probable effects" but not mere "tendencies" within the law of incitement.

These opinions by Holmes form a quite coherent body of law; but if there is any divergence between his various decisions, what is the relative value of each as an index to the philosophy of the Massachusetts justice?

The *Shenck* opinion is valuable for its test of "clear and present danger" of "substantive evils," but it was not a hard enough case to draw out from Holmes his full reasoning on the test of this guilt. It was not until he was confronted with an unjust conviction such as that of *Abrams* and his associates that Justice Holmes was moved to search himself and his philosophy to its depths. The result was a dissenting opinion comparable to his famous one in *Lochner v. New York*,<sup>18</sup> and one which probably will influence the future of the law on free speech more than all three of the opinions he wrote for the full court. Holmes appears to define his inspirations best when forced to do so by a majority of the court. His contention for the common law tests of criminal incitement in sedition the same as in other crimes is his vital contribution to the present law of freedom of speech.

### *Freedom of Speech as a State Question*

There is a point where the philosophy of Justice Holmes on freedom of discussion is bounded by his also distinct philosophy of the division of state and federal powers. This is reached in the recent case of *Gilbert v. Minnesota*,<sup>19</sup> In this case "the issue was the constitutionality of a state

<sup>18</sup>See note 26, *infra*.

<sup>19</sup>254 U. S. 325, 65 L. Ed. 287, 41 Sup. Ct. 125.

statute making unlawful any advocacy against enlistment in the federal military or naval forces or against aiding the United States in the prosecution of war."<sup>20</sup>

The majority opinion by McKenna held simply that Gilbert's conviction did not violate the constitutional guarantees of freedom of speech. Holmes concurred in the result though supposedly not in the reasoning. While he did not set forth his reasoning in an opinion, it may be fairly well guessed from the dissenting opinions with which he did not agree and from his own opinions in two early cases.

Chief Justice White dissented on the ground that after the passage of the Espionage Act by Congress, there was no further room for state action. White applied the same reasoning to this subject that Marshall had early adopted for the commerce and bankruptcy powers of Congress.<sup>21</sup> But it was not Holmes's philosophy to carry out this analogy.

Justice Brandeis, who had been Holmes's dissenting colleague in the *Abrams*, *Schaefer*<sup>22</sup> and *Pierce*<sup>23</sup> cases, dissented with White and stated the additional contention that freedom of speech was a "privilege or immunity" of a citizen of the United States within the terms of the constitutional protection,<sup>24</sup> and was also a "liberty" of which a citizen could not be deprived without due process of law.<sup>25</sup>

There is a quality in Brandeis' reasoning which one naturally expects the liberal Massachusetts jurist to accept. In fact it carries a conviction of an irony in the construction of the amendments to the Constitution. The irony is that after the Supreme Court has read into the Fourteenth Amendment what it called the freedom of contract, which is nowhere mentioned in the document of our forefathers, this same court refuses to include in that amendment the

---

<sup>20</sup>30 *Yale Law Journal*, 623.

<sup>21</sup>*Brown v. Maryland*, 12 Wheat. 445, 6 L. Ed. 678; *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L. Ed. 529.

<sup>22</sup>*Schaefer v. United States*, 251 U. S. 482, 64 L. Ed. 367.

<sup>23</sup>*Pierce v. United States*, 252 U. S. 253, 64 L. Ed. 549.

<sup>24</sup>Constitution, Article IV, Section 2, Paragraph 1.

<sup>25</sup>Constitution, Amendments, Article XIV, Section 1.

freedom of speech, which was considered so important by the founders of the nation that they made it the first article of the ten in their bill of rights.

But we cannot hold Justice Holmes as a party to this sophism, since his dissent in *Lochner v. New York*<sup>26</sup> would have denied the first premise of it and reserved to the states the right to legislate freely on the market of labor. His agreement with the *Gilbert* decision merely indicates his willingness to let the states legislate freely on the market of ideas. It leaves them subject only to their own state constitutional limitations against the abridgement of free speech and to the very remote check of the "due process" clause if the state legislation went far enough to be called unreasonable and arbitrary beyond question.

The key to his reasoning undoubtedly is found in his own opinion in *Patterson v. Colorado ex rel Attorney General*<sup>27</sup> which is a leading case on contempt and the jurisdiction of federal courts. Justice Harlan in that case dissented from Holmes and the majority upon identically the ground which now has been taken by Justice Brandeis.

The facts were these: Patterson had been fined for contempt of court and his fine affirmed in the Supreme Court of Colorado for printing articles and a cartoon bearing upon a case—largely political—which had been decided but upon which the time for motions for rehearing had not elapsed. Patterson set up the right under a combination of the Fourteenth and First Amendments to prove the truth of his publications as a defense to the charge of contempt.

The lines most often quoted from the opinion in this case are those to the effect that the main purpose of such constitutional provisions is "to prevent all such *previous restraints* upon publications as had been practiced by other governments" and that they do not prevent the subsequent punishment of such as may be deemed contrary to public welfare. These phrases were lifted wholly from an early Massachu-

---

<sup>26</sup>198 U. S. 74, 49 L. Ed. 949.

<sup>27</sup>205 U. S. 454, 51 L. Ed. 879.

setts case,<sup>28</sup> and their significance is largely altered by the effects of prosecutions under the Espionage Acts and of the virtual censorship sometimes exercised by the postoffice.

"What constitutes contempt, as well as the time during which it may be committed, is a matter of local law," ruled Holmes, and hence not reviewable by the Supreme Court nor within its jurisdiction. As to the claim of the right to prove truth, "we leave undecided," he said, "the question of whether there is to be found in the Fourteenth Amendment a prohibition similar to that in the First."

But while he left it undecided in words, he decided it effectually in action by leaving the petitioner out of court and by overriding the dissent of Justice Harlan, who said:

I hold that the privileges of free speech and of a free press, belonging to every citizen of the United States, constitute essential parts of every man's liberty, and are protected against violation by that clause of the Fourteenth Amendment forbidding a state to deprive any person of his liberty without due process of law.

Furthermore, Holmes concurred with the majority of the Court, Harlan again dissenting, in *Twining v. New Jersey*<sup>29</sup> which decided what he formerly "left undecided," that the Fourteenth Amendment does not enforce upon the states the limitations of the first ten amendments.

The case of *Fox v. Washington*<sup>30</sup> is also illustrative of Holmes's attitude on the state control of free speech, as it is of the trivialities to which the enforcement of a state sedition statute may lend itself. Fox was the editor of a paper in the once notorious Home colony of free thinkers in the state of Washington who flouted the suggestion of any need for clothing when they went in swimming. Their disrespect for the Washington statutes on indecent exposure was expressed in an editorial by Fox entitled, "The Nude and the Prudes," for which he was convicted under a statute

<sup>28</sup>*Commonwealth v. Blanding*, 3 Pick. 304, 313, 314, 15 Am. Dec. 214.

<sup>29</sup>211 U. S. 78, 53 L. Ed. 97.

<sup>30</sup>236 U. S. 273, 59 L. Ed. 573.

against printed matter tending to advocate or encourage disrespect for law.

In all this Justice Holmes upheld the state, though he could not forbear to add as a sly whipsnap near the end of his opinion that, "Of course we have nothing to do with the wisdom of the defendant, the prosecution, or the act."

Thus Holmes is bounded in his philosophy of freedom of utterance by his philosophy of state versus federal sovereignty. In view of the evils pointed out by Professor Chafee in the promiscuity of state sedition laws and prosecutions under them,<sup>31</sup> it is interesting to conjecture whether or not the future cases bound to arise under these state laws may not induce Justice Holmes to remodel his concept of state sovereignty more in line with the views of Harlan and Brandeis or White. This he could do without going counter to his *Lochner v. New York* opinion, because the freedom of speech is a guarantee written into the national Constitution while the freedom of contract, as the justice remarked, is written only into court opinions drawn primarily from Herbert Spencer's "Social Statics."<sup>32</sup>

Other points on the prerogatives of the state in regulating speech are contained in cases which arose before Justice Holmes while he was on the Massachusetts bench.

In *McAuliffe v. Mayor of New Bedford*<sup>33</sup> he approved the right of the state or its municipalities to prohibit its employes from spending their time in discussions of politics. Of *McAuliffe* he said:

The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.

Holmes's opinion in the case of *Burt v. Advertiser Newspaper Co.*<sup>34</sup> is a good survey of what is legitimate criticism of public officers. The action was to recover for libel con-

<sup>31</sup>*Freedom of Speech*, pp. 110, 180, 339 and *passim*.

<sup>32</sup>See note 26, *supra*.

<sup>33</sup>155 Mass. 216, 29 N. E. 517.

<sup>34</sup>154 Mass. 238, 28 N. E. 1.



tained in articles charging the plaintiff with connection with alleged customhouse frauds, the charges not being proved. The justice held it proper for the trial court to refuse to rule that the articles were privileged as being matters of public interest. He said:

There is an important distinction to be noticed between the so-called privilege of fair criticism upon matters of public interest and the privilege existing, . . . for instance, of answers to inquiries about the character of a servant. In the latter case a bona fide statement, not in excess of the occasion, is privileged, although it turns out to be false. In the former what is privileged, if that is the proper term, is criticism, not statement. . . . The reason for the distinction lies in the different nature and degree of the exigency and of the damage in the two cases. . . . What the interest of private citizens in public matters requires is freedom of discussion rather than of statement.

Quoting from *Davis v. Shepstone* by Lord Herschell,<sup>35</sup> he added:

It is one thing to comment upon or criticize, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct.

### *Freedom of Speech as a Labor Question*

Prominent among Holmes's Massachusetts cases is the dissent he voiced in *Vegelahn v. Guntner*,<sup>36</sup> which although not calling up the issue of free speech, was a forerunner to his opinions in later labor cases where that principle was involved.

In that case he did not agree with the assumption by the majority of the court that the patrolling of a factory by strikers carried with it a threat of bodily harm. In his writing here there is a tone that agrees well with his unwillingness later in wartime cases to assume that the appeal

<sup>35</sup>11 App. Cas. 187, 190.

<sup>36</sup>167 Mass. 92, 44 N. E. 1077, 35 L.R.A. 722.



of radicals for adherents carried with it a threat of bodily harm to the government.

"I pause here to remark," he said then, "that the word 'threats' often is used as if, when it appeared that threats had been made, it appeared that unlawful conduct had begun. But it depends on what you threaten."

This did not mean that Holmes accorded to labor unions unlimited freedom of speech in calling boycotts. His own view appears to have been that labor was free to use its weapons of the strike or boycott so long as it did not use violence in applying them—this was his position in *Vege-lahn v. Guntner*—but when the majority of the court had declared the boycott illegal, he "thereafter accepted the law from the majority."<sup>37</sup>

Hence, when the case of *Gompers v. Buck's Stove and Range Co.*<sup>38</sup> arose, he accorded with the majority of the federal supreme bench, and the officials of the American Federation of Labor were enjoined from furthering their boycott of the Buck Company by publications in their paper, the *American Federationist*.

Justice Lamar in that case said:

In the case of an unlawful conspiracy, the agreement to act in concert when the signal is published gives the words "Unfair," "We Don't Patronize," or similar expressions, a force not inhering in the words themselves, and therefore exceeding any possible right of speech which a single individual might have. Under such circumstances they become what have been called "verbal acts," and . . . subject to injunction. . . .

Lamar's reasoning is important in a consideration of Holmes's views because the latter cited this argument in *Shenck v. United States*<sup>39</sup> in the words, "It (the protection of free speech) does not protect a man from an injunction against uttering words that may have all the effect of force." This gives a clue that one of his general tests of the limits

<sup>37</sup>Plant v. Woods, 176 Mass. 492, 57 N. E. 1011.

<sup>38</sup>221 U. S. 418, 55 L. Ed. 797.

<sup>39</sup>See note 10, *supra*.

of freedom of utterance is to what extent the questioned utterance has "the effects of force."

It is true that Holmes himself wrote an opinion in connection with the Gompers controversy,<sup>40</sup> but its points of law are so restricted to procedure that its value to the subject of freedom of speech lies not in what the justice held but in what he said in an oft-quoted aside which runs:

The provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic, living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth.

*Freedom of Speech as a Philosophical Question*

It is thus that Justice Holmes has interpreted the privilege of open utterance. It is as a living institution born of experience that Justice Holmes seeks to protect the right of free speech. He does not stick the constitutional phrase up on a totem pole or make a fetish of it to be worshipped, but he preserves the right as one of the vital members of the living social organism.

All such institutions have their bounds. Holmes recognizes boundaries on three sides of the institution of freedom of speech.

On one side freedom of speech is bounded by the body of powers reserved to the state governments. Experience, so reasons Holmes, has led the national government to safeguard free speech. If the states have not learned the same lesson in that school and have not that guarantee in their constitutions and laws, then that is their matter, not the nation's. They are free to protect their courts as they like by actions for contempt, to restrain the talkativeness of their servants, and to punish sedition on an equal plane with the national government.

---

<sup>40</sup>Gompers v. United States, 233 U. S. 604, 58 L. Ed. 1115.

On the second side free speech is bounded by private rights. Some of these, such as tort liability for libel, which Holmes recognized in *Haynes v. Clinton Printing Co.*,<sup>41</sup> were well established before this jurist came into the field. Others such as the property rights of persons to be immune from injury by boycotts, conspiracies, or other "verbal acts," Holmes himself has had a part in outlining.

His third boundary line upon the institution of free speech is the nation's right of self-preservation. This is the foundation on which he bases sedition laws. And of sedition his philosophy is that this offense is nothing other than what Congress makes it, a statutory crime or attempt at crime, and so must be tested upon the same rules of evidence as any other crime or attempt at crime—arson, burglary, murder, or malicious mischief—that is, upon the test of the intent, the dangerousness of the act, and the nearness of its evil effects, not the test of how widely divergent are the prisoner's political and economic views from those of the majority represented on the jury.

As to this boundary line, the justice has something more than strictly judicial views if we go into his remarks outside of court. On the wisdom of sedition laws as a policy he has this commentary in a letter to the Harvard Liberal Club on January 12, 1920:<sup>42</sup>

With effervescing opinions as with the not yet forgotten champagne, the quickest way to let them get flat is to let them get exposed to the air.

And upon the susceptibility of courts to a hide-bound interpretation of constitutional rights, he had this to say in a speech, "Law and the Court," at a dinner of the Harvard Law School Association of New York on February 15, 1913:<sup>43</sup>

When twenty years ago a vague terror went over the earth and the word socialism began to be heard,

<sup>41</sup>169 Mass. 512, 48 N. E. 275.

<sup>42</sup>*New Republic*, Vol. 21, p. 250, January 28, 1920.

<sup>43</sup>*Speeches*, p. 101; *Collected Legal Papers*, p. 295. See note 5, *supra*.

I thought and still think that fear was translated into doctrines that had no proper place in the Constitution or common law. Judges are apt to be naif, simple-minded men, and they need something of Mephistopheles. We, too, need education in the obvious—to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with short of revolution by the orderly change of law.

In utterances such as these, Justice Holmes has given freedom of speech more than an institutional basis; he has given it a philosophical footing. He seeks to protect it because it gives a better way of getting at truth. But in that statement several steps are involved. He does not cry Truth for its own sake.

On the contrary he says:

I do not see any rational ground for demanding the superlative—for being dissatisfied unless we are assured that our truth is cosmic truth, if there is such a thing.<sup>44</sup>

I define the truth as the system of my (intellectual) limitations, and leave absolute truth for those who are better equipped. With absolute truth I leave absolute ideals of conduct equally on one side.<sup>45</sup>

I used to say, when I was young, that truth was the majority vote of that nation that could lick all others. . . . And I think that the statement was correct in so far as it implied that our test of truth is a reference to either a present or an imagined future majority in favor of our view.<sup>46</sup>

But "Certitude," he adds there, "is not the test of certainty. We have been cocksure of many things that were not so." So true is this that "to have doubted one's own first principles is the mark of a civilized man."<sup>47</sup>

<sup>44</sup>"Natural Law," *Collected Legal Papers*, pp. 314-15.

<sup>45</sup>"Ideals and Doubts," 10 Ill. L. R. 2, *Collected Legal Papers*, p. 305.

<sup>46</sup>"Natural Law," *Collected Legal Papers*, p. 310.

<sup>47</sup>"Ideals and Doubts," see note 45, *supra*.

This experience of having seen hypotheses which had been so long accepted that they were a part of us go down in defeat before newer principles is the thing which Justice Holmes says lies beneath our guarantee of freedom of speech and press. This philosophical basis he expounded best in his dissenting opinion upon *Abrams v. United States*:<sup>48</sup>

Persecution for the expression of opinion seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe in the foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

Such is the tone given to the law of the land by a seasoned philosophy of tolerance for every man's right to opinions.

---

<sup>48</sup>See note 12, *supra*.



## THE ECONOMIC BASES OF CRIME

EYLER SIMPSON

*University of Texas*

An examination of the literature and data of modern criminological science reveals in common with most hybrid sciences a difference of emphasis by the various schools with respect to causal relationships and the relative importance of the various antecedent factors operating to produce crime as a phenomenon of group life. That is to say that, whereas all scientific investigators in the subject recognize the multiplicity of causal determinants in the effecting of crime, yet we find the several distinct schools marked by the preponderating influence which they assign to some particular element in the etiology of crime. Thus, the Italian school insists especially upon the individual factors in crime, the French school considers the role played by the physical environment as very important, the bio-sociological doctrine forms a synthesis of these two, and finally the socialists propose the economic conditions as very important or even decisive. This classification does not include, of course, all the approaches to the science (*vide* the statisticians) nor does it even include the most modern point of departure (see, for example, William Healey, *The Individual Delinquent*) but it at least serves to reveal the points at which a variance of opinion most logically appears.

"A crime is an act forbidden and punished by the law which is almost always immoral according to the prevailing ethical standards, which is usually harmful to society, which it is ordinarily feasible to repress by penal methods, and whose repression is necessary or supposed to be necessary to the preservation of the existing order."<sup>1</sup> Accepting this definition of Parmelee's without discussion of its implications as offering a sufficient limitation of the term, it is the purpose of this article to point out some of the features of

---

<sup>1</sup>Maurice Parmelee, *Criminology*, New York, 1918, p. 32.



our modern industrial and economic mechanism which are not only present either directly or indirectly in the etiology of all crimes, but which make certain types of crime very nearly inevitable. Whereas the economic factor has always operated as a conditioning force in the activity of man within the group, it needs only a superficial reading of historical and current events to realize that the underlying struggle for existence has taken on a unique complexion in the last 150 years. Whether we choose to accept the Marxian interpretation or the broader "economic interpretation" as offering either efficient cause or sufficient reason for the present state of affairs, we are forced to meet in a very real manner the objective and results of the cultural evolution since the Middle Ages in the shape of labor problems, class struggle, poverty, communistic reorganization of society, and (as I shall try to point out) a widespread and increasing breakdown of social control manifested in criminal statistics.

There are several logical lines along which an investigation of this nature may proceed. First, we may point out certain of the broad underlying assumptions of the working basis of the modern economic scheme—notably the efficacy of business enterprise and free competition. Here we would be concerned with E. A. Ross's criminaloid. In the second place, and still in a very general vein, certain connections may be seen between crime and the repressive effect on human nature of centralized urban factory production on a large scale characterized by a minute subdivision of labor. Of equal importance in accounting for general unrest and a heightened valuation upon "worldly goods" (in which the motives for the commission of many economic crimes lie implicit) is the whole psychological inferiority-superiority mechanism at work behind the putative "decent" or "American" standard of living. Again, in the third place, there is a distinct relation between the volume of crime and the economic stratification of classes with the attendant large dependent and pauper classes and gross inequalities in the distribution of wealth. Finally, we may correlate fluctua-

tions in criminal statistics with that whole class of phenomena, the familiar and unique concomitant of the present industrial system, included under such heading as trade cycles, rising and falling prices, subsistence wages, seasonal fluctuations, and peculiarities of occupational distribution. It will be observed also that these factors here outlined are of paramount importance in any discussion of labor problems.

Before taking up in detail a discussion of the above mentioned factors, it would perhaps be appropriate to mention certain facts in regard to criminological nomenclature in the classification of crime. It is conceivable that any of the various types of crime—against property, against the state, against the person, against religion or public morals—may have in the role of an efficient cause any one, or all, of the suggested economic forces. It is generally assumed, however, that crimes against property are especially due to economic motives and roughly speaking they may be designated as “economic crimes.” Many attempts have been made to estimate the value of the economic forces in the causation of all classes of crime. The study made by Fornasari di Verce upon criminality in Italy is probably the most successful. He attempts to rank with reference to the strength of the economic motive the different types of crime such as thefts, embezzlement, fraud, commercial crimes, blackmail, extortion, homicide, assault, etc. The conclusion to be drawn from the study is that economic pressure tends to increase crimes against property more than crimes against the person. Substantially the same conclusion is to be drawn from studies made by Parmelee<sup>2</sup> and W. A. Bonger.<sup>3</sup> It is therefore with crimes against property or “economic crimes” that we shall be most concerned in this article. If it can be demonstrated that statistical estimates of the volume of crimes committed against property tend to vary directly with either the intensity or extensity of the operation of economic forces and characteristics it may be

<sup>2</sup>*Op. cit.*, p. 78.

<sup>3</sup>W. A. Bonger, *Criminality and Economic Conditions*, Boston, 1916.

possible to prove that there is a clear connection of cause and effect (correlation) between the two variables.

We who have had our being within the limitations of the modern industrial society find it very difficult to realize that any other state of being is possible in the future and it is only with a very careful development of our historical imagination that we are able to construct a situation in the past which differs materially from that which by virtue of its very existence is "natural" and "reasonable" to us. And yet the whole cultural ensemble as we see it today is very recent in the history of the race. So recent, in fact, that many of our later day psychologists are prone to think that the major portion of our social malaise is due to the fact that the change has been all too abrupt for human nature to effect an adjustment to the new demands that are put upon it. As Tarde has it . . . "ce n'est pas le capitalisme comme tel qui est démoralisateur, c'est la crise morale qui accompagne le passage de la production artisanale à la capitaliste, ou de tel mode de celle-ci à tel autre mode."<sup>4</sup> The elements of this moral crisis form the subject matter of a great many very learned treatises (see, for example, Henry Adams, *The Degradation of Democratic Dogma* and the many books which seek to establish criteria of Social Progress) only a few of which may be touched upon in this connection. Whatever else our modern civilization may mean it certainly is vastly more complex than any form of life that has yet been the part of man; a complexity which manifests itself in an increasing pressure which is felt on all sides and finds multiple exemplification in every nexus of our existence. Consider, for example, the heightened intensity of the pressure brought to bear on human nature by the narrow margin allowed to human relationships on their temporal side. In the statement this seems to be a simple, almost mechanical fact, yet the implications for human existence and welfare are tremendous. Things must be done on time.

---

<sup>4</sup>G. Tarde, *La Criminalité et les phénomènes économiques*; *Arch. d'anth. crim.*, Vol. XVI, 1901, p. 158.

Our meals, our sleep, our work, our amusement—every act of life for the urban dweller is regulated down to the split second. The time clock has become a great and a pregnant symbol. The screws have been gradually tightened until the temporal interstice between stimulus and reaction has almost in the language of student themes “paled into insignificance.” Human nature is being jammed in between the hours. And yet all this seems very natural to us and, in fact highly desirable and commendable if we are to judge from the evidence derived from a reading of “business” publications, mottoes in banks, and the confessions of various and sundry successful men as revealed in the pages of the *American Magazine*. It remained for the abnormal psychologists to appear on the scene and tell us that it is just such a “natural” condition of life as this which is at the bottom of the increasing number of cases of paranoia among business men and the various neuroses to which the feminine element of the population seems to be subject. This breakdown or rebellion of our original instinctive nature against being shoved down into any such iron-bound, mechanical order such as in the nature of the case has been forced upon us by our industrial system is most clearly to be seen, if we are to believe the Freudians, in the various aberrational tendencies of the sex instinct. However, and with more bearing on the question at hand, we are becoming cognizant of the affection at other points. I need only mention Veblen’s, *Instinct of Workmanship*, Tawney’s, *The Acquisitive Society*, Hobson’s, *The Evolution of Modern Capitalism* and Carleton Parker’s, *The Casual Laborer and Other Essays* to call to mind a whole literature which has sprung up to exhibit the evil effects of the degredation and degeneration of the instinct of workmanship under the modern economic system. Their analysis runs briefly in this manner: the worker divorced from the ownership of his tools, without standing in the community, a depersonalized cog in a great machine, has lost the normal (customary under the old regime) outlets for inherent urges; for these normal outlets no other means of expression have

been substituted; on the other hand, it is characteristic of human nature that no bottling up of these instinctive tendencies is possible, but rather all human activity is untiringly and unceasingly actuated by the demand for an adequate realization of these instinct wants. As Parker has it in his essay on the *Motives of Economic Life*,... "with the industrial revolution and the emergence into the pecuniary scheme of things a small property-owning class and a large proletariat, life presented habit opportunities which stressed, in the master class, the so-called egotistical instincts of leadership, hunting, ostentation and vanity, and for the working class removed the opportunities to express the instinct of workmanship and reduced and restricted the other avenues of expression or perverted them to non-evolutionary or anti-social behavior. Instinct perversion rather than freely selected habits of instinct expression seems broadly a just characterization of modern labor-class life. Modern labor unrest has a basis more psychopathological than psychological, and it seems accurate to describe modern industrialism as mentally unsanitary."<sup>5</sup> What we have then at the present juncture is a large proportion of the population suffering from perverted and balked desires which cannot find, but must have a normal (respectable and accepted) outlet. When such a state of affairs exists only one thing can happen. The lid pops off. It is then only a question of the individual temperament, of the reaction strength and nervous tension of the individual whether the "popping" will result in such relatively minor difficulties as labor agitation, union organization, strikes and other economic orgies, or whether it will eventuate in out and out criminal acts as the mutilation of materials, and machinery, sabotage, burning of wheat stacks, dynamiting of buildings—all examples of industrial and economic crimes which fill the papers every day. In consideration of this class of phenomenon probably more clearly than any other we may see how very thin is the line which may be drawn between

---

<sup>5</sup>Carleton Parker, *The Casual Laborer and Other Essays*, New York, 1920, p. 156.



the actualities of the labor problem and the materials of criminal science. In both cases the impelling force to anti-social action is closely allied with the whole economic and industrial composite peculiar to this day and age.

Another psychological mechanism which works with singular vigor in many instances for the production of crime under our present industrial regime is the so-called inferiority complex, in conjunction with the putative necessity for the maintenance of a "decent" standard of living. The outlines of the situation are comparatively simple when couched in terms of social psychology. In the first place it must be recognized that the strongest of the instinctive forces operative in original human nature (with the possible exception of hunger and sex) is the desire on the part of the individual to receive approval from the other members of the social group. This is sometimes called the instinct of vanity, at others the instinct of self-assertion or self-expression. Whatever name by which we may finally choose to identify it, the important fact in this connection is the realization that every individual must feel that he has a certain standing in the group in which he lives, i. e., he must gain prestige according to the standards of the group. Now it so happens that like other social forces these standards of prestige have varied according to time, place and conditions. At the present cultural conjuncture the dominating force of all our social existence is the economic system which was introduced by the industrial revolution. As might be expected, therefore, the standards of prestige in the western civilized (industrialized) world are in the nature of economic standards. Or, in other words, as Veblen would have it, they are "pecuniary" standards under which the amount of prestige which any given individual may garner will depend upon his ability to exhibit the fact that he has money. This can be done in only one way and that is by conspicuous expenditure. Furthermore, as will be shown in more detail for the United States in another connection, the present distribution of wealth and income in the western nations depending on a basis of the ownership



of property (primarily in claims to certain intangible capital assets such as rights, patents, and contracts) is of such a nature that that part of the population which is able to spend with the greatest facility and the greatest public manifestation forms in numbers only a very small fraction of the whole people. This is the leisure class. And it is this class which, by virtue of its greater power to "manipulate" the materials of economic welfare to its own advantage, sets the standards of prestige for the whole population. Now under another situation, as for example, that of the Middle Ages, where a strict class stratification existed with the barrier between the classes depending upon such irrevocable premises as birth-right, the activities of the upper class would have been of very little concern to the rest of the people. But now we face an entirely different set of facts. Concomitant with the industrial revolution came the fine flowering of the elusive concept, democracy, and the whole system of class relationships has changed. Inter-class standards have now become intra-class standards. In this latter day any man is just as good as any other man. Which, when translated, means that every individual now feels that he has an inalienable right to live and act just like every other individual within the group, i. e., he has a right to maintain a standard of living equal to any maintained within the group. And just here the psychological mechanism referred to above, enters in to complicate the situation. This takes the form of that peculiar twist in human nature lately emphasized by the abnormal psychologists (*vide* Adler and Kempf) and known as the feeling of inferiority of the "inferiority complex" with its resulting effects of over-compensation. In short, this simply means that if for any reason (as, for example, organic defect, or lack of mental "astuteness," idealistic principles, etc.,) an individual within a certain group is unable to get the approval, that is, unable to measure up to the standards of prestige, of the group, he is liable to develop as a result of his abased situation in relation to his fellow man an inferiority complex. As a result of this

complex he will put forth redoubled effort to compensate for and conceal his inability to get the approval that he desires. This in turn eventuates in an over-shooting of the mark—or technically, over-compensation. The vicious circle is now complete. The implications of such a condition of affairs are obvious. Here you have a state of human nature which makes it necessary for every man to gain the approval of his fellow beings, at the same time a state of society exists in which the standards to which a man must measure in order to receive this approval are essentially pecuniary standards of conspicuous expenditure maintained and set by a leisure class. While this class is able to spend with the required facility (like gentlemen) the majority of the population is unable to spend and therefore is in an inferior position. Yet this majority feels (in degrees varying with the potency of the indoctrination of the democratic dogma) that it has an equal *right* with the leisure class to maintain its prestige (spend) and feels it with peculiar intensity because of the very position of inferiority which it occupies. Here, again, for the great majority of people the concrete results of this general state of affairs are of a comparatively innocuous nature. That is to say the hoi polloi simply has a vague feeling that the main business in life is to “keep up with the Jones.” In the case of the laboring population this takes the form of demanding higher wages from time to time. But for others of more unstable temperament or a predisposition flatly to refuse to accept the justice of the present situation either from “mental bluntness” or some similar radical disaffection, the outcome is likely to be of an entirely different character. Is it very hard to connect up the above reasoning with the criminal “direct action” methods of the I. W. W.? Is it even stretching the point to associate with the influence of leisure class standards on the “naive mind” the fact that in 1920 one automobile out of every 30 in New York, one out of every 22 in Chicago, and one out of every 31 in Detroit was stolen? Finally, is a study of the etiology of the individual crimes necessary to estimate the effective force for

crime of the putative necessity on the part of the individual to maintain his "customary" standard of living at work behind the total of \$5,623,816 embezzlement losses paid by thirty of the leading insurance companies in the United States during 1920? One realizes that these facts in no sense furnish absolute proof of the contentions in this paper. In the nature of the case it is almost impossible to establish absolute relations of cause and effect, however, they are suggestive of more than casual relationship and may furnish a clue to more accurate analysis.

Heretofore we have been seriously hampered in the United States and other of the industrial nations in our attempts to investigate the varied problems affecting social welfare by the pitiful lack of social statistics. This condition still exists especially in the matter of criminal and vital statistics.<sup>6</sup> However, we are beginning to at least make estimates (in some cases of real scientific value) with the result that we are getting to the point where we can settle accounts and reach at least a provisional balance with our industrial system run on a basis of "business enterprise" and the individualistic laissez faire philosophy. One of the most positive facts which this accounting reveals is that, whatever may be the theoretical rights of an individual to attain to any station in life that may suit his fancy, in fact there exists a clear and binding economic stratification of classes. This division runs along the familiar lines: a very large portion of the income received and the wealth owned is in the hands of a very small upper class, while a much larger class (by far the majority of the population) receives relatively a very small amount of the income and owns very little of the wealth. A statistical presentation of these facts

---

<sup>6</sup>"Statistics on crime, so far as they are kept at all, are kept in a desultory, detached and fragmentary manner which evokes the openly expressed amazement of foreign criminologists, it is not possible to present a comprehensive statement of facts on the subject...Not a single large city in the country issues a clear and comprehensive police report." (C. F. Carter, *The Carnival of Crime in the United States*, Current History, February, 1922, Vol. XV, p. 153.)

may be taken from King and Associates' report on the income of the United States. Their conclusion is that "the best approximation that this bureau has been able to make indicates that in 1918 the most prosperous 1 per cent of the income receivers had nearly 14 per cent of the income, the most prosperous 5 per cent had nearly 26 per cent of the total, the most prosperous 10 per cent had nearly 35 per cent of the total. . . it should be noted that if we go down from the top of the scale we must go down to people receiving \$1,700 to \$1,800 to include 20 per cent of the income receivers. In 1918, 86 per cent of the people gainfully employed in the United States had incomes of less than \$2,000 per annum."<sup>7</sup>

Without adducing more figures to prove what is already familiar to all students of social problems, we may draw such conclusions as are obvious from the fact that living under such a system, as I have pointed out above, we have here a statistical proof that by far the majority of the income receivers in the United States are living on the verge of poverty. (The budget for a *minimum* standard of living for a family of five was variously estimated in 1918 from \$1,500 to \$2,200.) And, although we cannot produce parallel statistics for crimes committed in an exact cause and effect relationship, would we be far wrong in assigning such conditions as these to the forming of at least a large part of the motives that led to crimes against property to the extent of a \$10,189,852 loss from burglary alone in 1920? And, as will be seen later, this represents only the burglarization of property that was insured. Uninsured losses would swell the total to an enormous figure.<sup>8</sup> There can be no reasonable doubt that much, if not the majority, of the thievery, forgery, robbery and other crimes against prop-

<sup>7</sup>King and Associates, *Income in the United States*, New York, 1921, pp. 140-47.

<sup>8</sup>Losses aggregating \$1,630,009 were reported to the police of Boston in 1920. For the same year in Washington thefts reported amounted to \$1,008,875. Chicago reported \$3,974,326 stolen in 1921. (Taken from article by C. F. Carter, *op. cit.*, p. 554.)



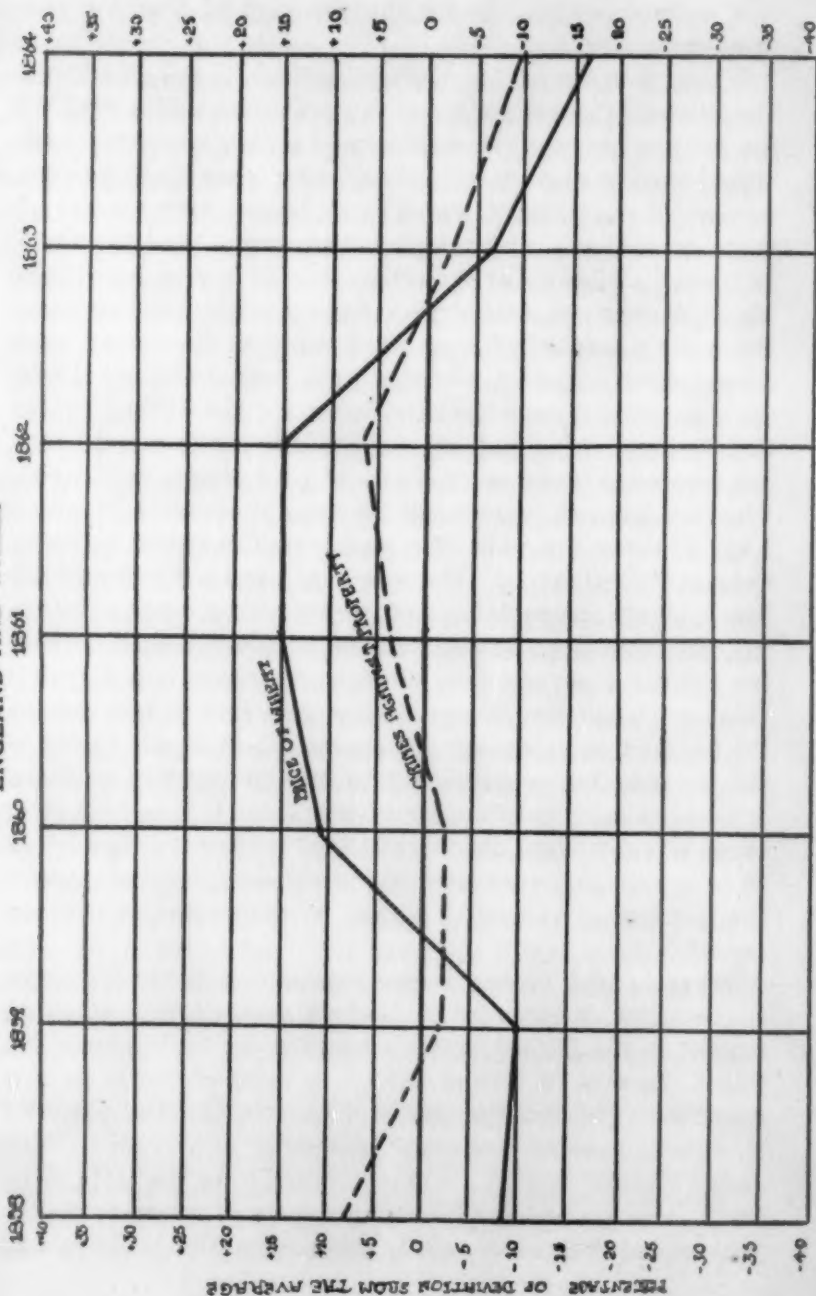
erty were committed under the pressure of absolute economic necessity.

W. A. Bonger in his book, *Criminality and Economic Conditions*, presents a number of correlation tables to prove the relation between the number and variety of crimes committed during a given period and such characteristic phenomena of our present economic system as crises, seasonal wage fluctuations, rising and falling prices, and the occupational distribution of the criminals. It is to be noted that his evidence is mainly drawn from continental European countries where careful criminal statistics have been kept for a number of years. Unfortunately, as pointed out above, no such wide-spread statistics exist for the United States and the only thing that we can do is to make certain suggestive comparisons on the basis of such estimates as exist. First, in order to understand the type of evidence of which I am speaking, it may be of value to examine one of Bonger's charts. (See Chart I.) Here we can detect a direct correlation between the variations of the price of wheat in France and the variations in the number of convictions for theft for the same periods. In other words there is a very obvious tendency for crimes against property to increase as the price of cereals rise. Of course the economic factor is not the only factor which enters into the etiology of these crimes but such coordination of trends, as is here indicated, seems to denote that the price of food stuffs (of which bread is, of course, the principal item) affects in a marked manner the number of crimes that may be committed in a given period.

What do such figures as are available reveal with regard to the action of these forces in the United States? Can we exhibit in the United States a correlation, for example, between the cost of living and the volume of crime in this country? This I think can be done. In the first place let us examine certain summary estimates with regard to the recent "crime wave." Again referring to the article by Mr. Carter we find the following figures of interest: In the year ended August 31, 1921, there were 136 hold-ups and



Chart I  
ENGLAND AND WALES



396 burglaries of banks. . . . The aggregate loss was \$1,224,489, as compared with 122 hold-ups and 393 burglaries, with an aggregate loss of \$1,002,493 in 1920 (i.e., year ending August 31), and 80 hold-ups and 115 burglaries, with a loss of \$301,192 in 1917. In the twenty-three years ending with 1917 the aggregate loss amounted to \$2,609,754, an annual average of \$113,467. An increase from an annual average loss by robbery of \$113,467 to \$301,792 in the last year of the period, and to \$1,224,489 four years later, may justly be characterized as startling. Such figures as are possessed by the Automobile Chamber of Commerce show that in the principal twenty-eight cities 30,046 cars were stolen in 1920, as compared with 27,445 in 1918. . . . Losses aggregating \$1,630,009 were reported to the police of Boston in 1920, as compared with an annual average of \$816,341 for the five years ending with 1920, or an increase of over 100 per cent for that year over the five-year average. Thefts reported to the Washington police aggregated \$1,008,875 in 1920 as compared with \$336,067 in 1916. Baltimore reported \$1,347,402 stolen in 1919 as compared with \$410,486 in 1912.<sup>9</sup> However these figures may startle Mr. Carter, it may be possible to demonstrate that they follow just as "naturally" as results of the operation of the economic forces which make for crime as any effect follows its cause in any other science. Still more evidence may be found in an article in the *Dallas News* of recent date. "Figures of the National Surety Company compiled through secret records of the company in its business of 'underwriting honesty' show that five times the number of embezzlements and ten times the number of burglaries recorded in 1910 occurred in 1920."<sup>10</sup> In an earlier issue we have more complete figures from the same company.

<sup>9</sup>C. F. Carter, *op. cit.*, p. 154.

<sup>10</sup>*Dallas News*, February 9, 1922, p. 1.

*Losses Paid by Thirty Insurance Companies*<sup>11</sup>

Year	Embezzlement	Burglary
1910-----	\$1,396,081	\$ 886,045
1913-----	2,030,201	1,298,588
1918-----	3,060,348	2,964,790
1919-----	4,663,604	5,660,305
1920-----	5,623,819	10,189,853

Now what do we find on the other side of the equation? The economic conditions which existed during this period for which Mr. Carter and Mr. Joyce (the President of the National Surety Company) cite their startling increase in crime may be briefly summarized as follows: A gradually ascending scale of the cost of living reaching *its peak in 1920* (see Chart II); relatively high wages which continually lagged behind the cost of living; the greatest volume of unemployment that the United States has ever experienced (reaching a peak of almost 6,000,000 in the early part of 1921) with a marked lack of adjustment between demand and supply and a general disorganization of the labor market; general industrial unrest, many strikes, unstable commercial and financial operations with a panic and industrial depression pending if not actually already existent. In other words, despite apparent high wages, there was a general impression of hard times and industrial maladjustment. No doubt, the war and the aftermath of the war with the disorganized condition of Europe was very largely responsible for the existence of these conditions. Be this as it may, the important point in this connection is that such a state of affairs did exist and *that it existed at the same time that we had an enormous increase in the volume of crime in this country.* To make the now apparent connection between these sets of phenomena a little more clear I have included here a chart in which I have superimposed upon a graph illustrating the trend in the cost of living used by W. M. Persons in an article on crises<sup>12</sup> the graph-

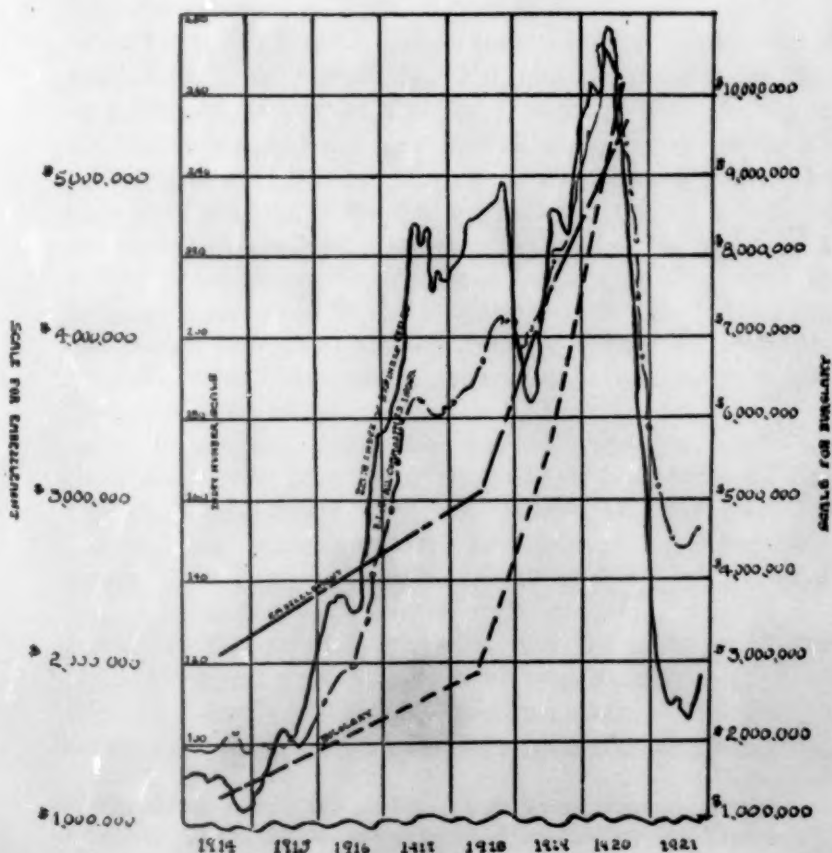
<sup>11</sup>Dallas News, February 5, 1922, p. 1. (Figures of the National Surety Company.)

<sup>12</sup>W. M. Persons, *The Crisis of 1920 in the United States*, The Am. Ec. Rv. Vol. XII, No. 1, p. 7.

ical representation of the table of burglary and embezzlement quoted above. (See Chart II). The graph is self-explanatory and I hardly need point out the obvious correlation between the cost of living (as indicated by the Price Index of the United States Bureau of Labor Statistics

CHART II

Exhibiting Correlation in US Between  
Cost of Living and Losses From Crimes Against Property  
1914 - 1921



for All Commodities and the Ten Commodity Price Index of Business Cycles) and the total insured loss from two of the major crimes against property. The same correlation may be noted for the same period in the figures for theft in Washington, Chicago and Boston, losses from hold-ups and robberies cited from the American Bankers' Association, and the figures for automobile thefts. Were more accurate and more extensive statistics available, I have no doubt that we could establish an even more pointed relationship of cause and effect between economic forces and conditions and the volume of crime in the United States.



## DIVISION OF LATIN-AMERICAN AFFAIRS

EDITED BY IRVIN STEWART

*University of Texas*

### THE FIFTH PAN-AMERICAN CONFERENCE

J. WARSHAW

*University of Nebraska*

The Fifth International Conference of American States,<sup>1</sup> which opens its sessions in Santiago, Chile, on March 25 of this year, promises to be of unusual interest from several points of view.

Between the Fourth Conference, held in Buenos Aires from July 12 to August 30, 1910, and the present Conference, the major part of the Old World has been shaken to its foundation, but the New World has suffered practically no alterations. During this space of thirteen years, the growth of interest of the United States in the Latin-American countries has been marked. The kind of interest which it has in its sister republics has become much clearer to foreigners and even to many citizens of the United States, and is seen to be far removed from the dangerous covetousness so strongly stressed by numerous Latin-American and European politicians.

In the interval, Porto Rico has been granted American citizenship, with practically complete self-government, the supervision of Santo Domingo, Nicaragua, and Haiti by United States administrators has developed no sinister elements, Cuba has not been interfered with in any harmful way, Mexico has been treated with what may now be regarded as fair-minded tolerance, and the services of the Latin-American governments have been sought in the settlement of conflicts between American states. The dispute between Panama and Costa Rica and the long-standing

---

<sup>1</sup>The writer is indebted to Dr. Leo S. Rowe, Director of the Pan-American Union, for valuable material bearing on the Conference.

trouble between Chile and Peru<sup>2</sup> have been disposed of through the good offices of the United States, the initial payment on the \$25,000,000 to Colombia approved by Congress was made last December, political disaster in Cuba was recently averted with the practical assistance of General Crowder, and another effort at composing Central American differences and establishing a solid basis for harmony and cooperation has just been made in what has been characterized without hypocrisy and accepted without suspicion as the "friendly atmosphere of Washington."

The words pronounced by Secretary Hughes at Cleveland November 4, 1922, can be taken by the world at large at their face value. That the United States does not covet territory anywhere on the globe, hanker for special spheres of influence, or expect anything more than the "open door" and the right to protect its citizens wherever they may be stationed, may be viewed as the real foreign policy of the United States, consistently pursued in spite of temporary appearances and emphatically endorsed by the people of the United States. Certainly, the above-mentioned period of thirteen years should prove reassuring to some of the governments south of us which have at times indulged in moments of skepticism. Years fraught with peril have left the New World unscathed. The "colossus of the North," more colossal than ever, has gained something of a guardian aspect in the intervening years.

Facts of this sort cannot fail to impress the Latin-American members of the Conference and influence the tone of the assembly in the direction of increased cordiality toward the opinions and suggestions of the delegates from the United States. They are a convincing demonstration that the United States stands merely in the position of a sincere partner on this hemisphere to whom greater power and experience have come through historical accident and that much of the misunderstanding due to ephemeral incidents

---

<sup>2</sup>Cf. *The Southwestern Political Science Quarterly*, September, 1922, "The Controversy Over Tacna and Arica and the Washington Conference," by Ethel M. Crampton.

has been the result of inability on the part of prejudiced observers to admit other motives than those which appear ingrained in European diplomacy.

Though overemphasis may easily be placed on our own importance in the Conference, it is not to be denied that our delegation will be conspicuous both as the representatives of the greatest of the American states and as the personal embodiment of a people which occupies, perhaps more than any other, the attention of statesmen, educators, and the press of Latin-America. In the public discussions which will accompany the meetings of the Conference and continue after its termination, the activities of the United States representatives will be subjected to the most minute examination and criticism, both friendly and antagonistic. It is, therefore, of the utmost importance that our representatives should stand for what is best and most permanent in our Latin-American relations and in our principles as a member of the Pan-American Union.

The United States delegation will be composed of the following eight members, who are fairly representative both geographically and with respect to their interests: Hon. Henry P. Fletcher, Senator Frank B. Kellogg, Senator Atlee Pomerene, ex-Senator Willard Saulsbury, Mr. William Eric Fowler, of Washington, D. C., Dr. George E. Vincent, Mr. Frank C. Partridge, and Dr. Leo S. Rowe. Mr. Fletcher, the American ambassador to Belgium, who will head the delegation, has been the United States ambassador to Chile, the place of meeting of the Conference, and Mr. Partridge has been the United States minister to Venezuela. The inclusion of a former university president and the actual president of the Rockefeller Foundation, in the person of Dr. Vincent, means that an authoritative spokesman on educational subjects will represent American educational thought. Dr. Rowe, by virtue of his position as director general of the Pan-American Union, naturally has a place on the delegation, but he would in any case be perhaps the one member who might be regarded as indispensable by reason of his thorough and intimate knowledge of Latin-American affairs

in general and his special knowledge of economic and political conditions in the various American republics. In addition, Secretary Hughes, it is hoped, will be the guest of the Chilean Government, whose urgent invitation he has accepted in the following terms:

I trust that no contingency may arise to prevent the carrying out of my present plans to attend the Conference and I shall be greatly obliged if, in conveying to His Excellency the President, my heartiest thanks for his kind offer of hospitality, you will be good enough to explain that only an unforeseen emergency requiring my presence in this country, will prevent my attending in person the Conference to be inaugurated at Santiago in March of this year.

Under ordinary conditions, the visit of a secretary of state of the United States to the Latin-American republics is an event of major significance and is so treated in Latin-America. In the present circumstances, the visit of Secretary Hughes to the Chilean government, whose most vexing problem has lately been resolved under his sure guidance, may be considered an event of the very first magnitude.

The high quality of the American delegation will undoubtedly be matched by the delegations from other American states, and the wisest thought of the Three Americas may confidently be expected to bear upon the problems submitted at the Fifth Conference.

## II

The following is the program of the Fifth International Conference of American States, as approved by the governing board of the Pan-American Union, December 6, 1922.

I. Consideration of the action taken by the participating countries and of the application in each country of the conventions and resolutions of previous Pan-American Conferences, with special reference to the convention concerning trade-marks, and the convention on literary and artistic copyright, signed at Buenos Aires, August 20, 1910.

II. Organization of the Pan-American Union on the basis of a convention, in accordance with the resolution adopted by the Fourth Pan-American Conference at Buenos Aires, August 11, 1910.

III. Consideration of the results accomplished by the Congress of Jurists which met at Rio de Janeiro with respect to the codification of international law.

IV. Measures designed to prevent the propagation of infectious diseases, with special reference to the recommendations of the International Sanitary Conferences.

V. Pan-American agreement on the laws and regulations concerning, and cooperation in the improvement of the facilities of, communication on ocean and land and in the air.

1. Improvement of ocean transportation facilities.

2. The Inter-Continental Railroad and motor transportation.

3. Policy, laws, and regulations concerning commercial aircraft; the advisability of an international technical commission on the location of standard landing places, the determination of aerial routes and the formulation of special customs procedure for aircraft.

4. Cooperation of the Governments of the American Republics in reference to all kinds of wireless communication in America; and by means of agreements for its regulation.

VI. Cooperation with respect to the supervision of merchandise entering into international commerce.

1. The uniformity of customs regulations and procedure.

2. The uniformity of shipping and insurance documentation.

3. The uniformity of principles and interpretation of maritime law.

4. The uniformity of nomenclature for the classification of merchandise.

5. Uniform parcels post procedure and consideration of the Pan-American Parcels Post Convention.



6. Advisability of adopting conventions in order to make effective Resolution XVII, voted by the Second Pan-American Financial Congress, which assembled at Washington in January, 1920.<sup>3</sup>

VII. Measures for the simplification of passports and adoption of standard form.

VIII. Cooperation in the study of agricultural problems. Uniformity of agricultural statistics. Cooperation in the elimination of diseases of cattle. Organized effort for interchange of useful plants and seeds.

IX. Consideration of measures tending towards closer association of the Republics of the American Continent with a view to promoting common interests.

X. Consideration of the best means to give wider application to the principle of the judicial or arbitral settlement of disputes between the Republics of the American Continent.

XI. Consideration of the best means to promote the arbitration of commercial disputes between nationals of different countries.

XII. Consideration of the reduction and limitation of military and navel expenditures on some just and practicable basis.

XIII. Consideration of standardizing of university curricula and mutual recognition of the validity of professional degrees among the American Republics.

XIV. Consideration of the rights of aliens resident within the jurisdiction of any of the American Republics.

XV. Consideration of the status of children of foreigners born within the jurisdiction of any of the American Republics.

XVI. Consideration of the questions arising out of an encroachment by a non-American power on the right of an American nation.

---

<sup>3</sup>The resolution referred to above is the following: "Resolution XVII. *Resolved*, That, it being in the interest of all nations that there should be the widest possible distribution of raw materials, the importation of such materials into any country should not be prevented by prohibitive duties."

XVII. The formulation of a plan by which, with the approval of the scholars and investigators in the several countries, approximately uniform means may be used by the governments of the Americas for the protection of those archaeological and other records needed in the construction of an adequate American history.

XVIII. Consideration of measures adapted to secure the progressive diminution in the consumption of alcoholic beverages.

XIX. Future Conferences.

Comparing this outline of topics with the programs of preceding Conferences—the first of which was held in Washington, from October 2, 1889 to April 19, 1890—it will be found that topics II, V (3 and 4), VI (5), VII, VIII, X, XII, XIII, XV, XVII, and XVIII represent in whole or in part new problems arising out of changed conditions in the world or in the Americas.

At each Conference, the discussion of ways and means for securing greater uniformity in regulations governing the collection of customs, copyright, trade-marks, consular laws, and the like, and for the promotion of the peace and prosperity of the American states and the wider and more exact application of arbitration, has belonged to the regular order of business and must perforce continue for a long time to come up at each meeting. It is not an easy task to mould to a common standard the practices and theories of twenty-one different countries. Yet much progress in standardization and uniformity has been made, and approximation to an American norm, as well as to a universal norm, is perceptible.

The promotion of prosperity and the wider application of arbitration in both political and commercial contentions, are, of course, of never-ending import, and may be expected to engage the attention of all international conferences. Fortunately, the prosperity of any of the American States including the United States, is bound up in the prosperity of all, and most fortunately, indeed—and contrary to common opinion in the United States—our Latin-American neighbors have shown a most praiseworthy disposition to

have recourse to arbitration and to abide by the decisions of the arbitral body. It is doubtful that any of the continents can, within a period of less than forty years, point to a better arbitration record than is evidenced by the settlement of boundary disputes by arbitral decision or through the medium of mixed commissions or treaties, as detailed by Dr. Alejandro Alvarez,<sup>4</sup> to which should be added the recent solution of the Panama-Costa Rica and the Chile-Peru difficulties.

A study of the means by which conflicting Latin-American countries have arrived at agreements regarding disputed boundaries offers convincing proof that settlement by arbitration is the rule, and not the exception. Without question, the disputes still pending will be settled in the same manner.

### III

Of the new, or relatively new, topics for discussion, II, XII, XIII, and XVIII are of special interest to the American reader because of the general lack of information in our country regarding the true attitude of Latin-American governments toward the subjects in question.

#### *Organization of the Pan-American Union on the Basis of a Convention*

The Pan-American Union was created upon the recommendation of the First International Conference (1889-1890). The aim of the International Bureau of the American Republics, as it was then called, was to collect and distribute commercial information. Since then, the activities of the Pan-American Union have been widely extended, and there is little information of whatever sort that the Union is not able to supply. As a permanent committee of the International American Conferences, the Pan-American

---

<sup>4</sup>Alexandre Alvarez (Dr. Alejandro Alvarez of Chile), *Le Droit International Américain*, Paris, 1910; pp. 195-200.

Union is privileged to submit topics to be treated at the Conferences. It is also charged with keeping the records of the Conferences. The present director general is an eminent American scholar and practical executive, and the assistant director is a Venezuelan diplomat, who has filled his present position since 1905. The Pan-American Building, made possible principally through the munificence of Andrew Carnegie, occupies a prominent place in the diplomatic and social life of Washington. It has already been the ground of historic meetings.

Thus far, the Pan-American Union has functioned on the basis of resolutions taken at the various Conferences. Its maintenance has been defrayed by quotas paid in by the American republics in proportion to their population, and not, as might erroneously be assumed, by the sole contribution of the United States. By the resolution of the Fourth Conference, the American republics bound themselves "to continue to support the Pan-American Union for a term of ten years," and agreed that "the Pan-American Union shall continue for successive terms of ten years unless twelve months before the expiration of such term a majority of the members of the Union shall express the wish, through the Secretary of State of the United States of America, to withdraw therefrom on the expiration of the term."

Hence, the advantage of the Convention proposed for discussion at the Fifth Conference. Ratified by the different American governments, the Convention will place the Pan-American Union on a permanent basis and remove some of the criticism to which it is occasionally, and unjustly, subjected.

The possibilities of the Pan-American Union have been summed up admirably by Don Alejandro Alvarez:<sup>5</sup>

Ainsi donc le Bureau international des Républiques américaines est appelé à établir la bonne entente entre tous les États de l'Amérique et à faciliter les rapports de toutes sortes; il deviendra de la sorte le centre directeur d'une conscience et

---

<sup>5</sup>*Op. cit.*, p. 233.

d'une opinion publique vraiment américaine dont l'influence, surtout morale, se fera sentir dans tout le Nouveau Monde.

En Europe, il n'existe rien qui puisse égaler une pareille institution, les Unions ayant un but plus ou moins limité ou spécial. L'institution du Bureau a donc un caractère nettement américain; il exercera son influence constante dans les rapports internationaux des États du Nouveau Monde.

But, adds Dr. Alvarez in a footnote, "Plusieurs ont vu dans ce Bureau une espèce de ministère des États-Unis, destiné à informer ces derniers sur tout ce qui intéresse la vie économique des États de l'Amérique latine." Various foreign critics—in particular, Spanish critics—have even spoken of the Pan-American Union as a semi-political institution directly controlled by the United States government and bent chiefly on the dissemination of views favorable to the United States.

To anybody familiar with the publications and activities of the Pan-American Union, such criticism must seem highly prejudiced. What, indeed, has struck the present writer in the long course of years during which he has followed the work of this international institution has been the careful avoidance of publications or actions at which any member of the Union might take offense, the care with which all politics not simply informational has been eliminated from its public work; and the vast amount of useful information about each of the member countries which has been disseminated among the readers of its English, Spanish, Portuguese, and French bulletins and studies. Its educational work, both among teachers and with the general public, has, in fact, been stupendous; and it may be said without much exaggeration that such knowledge of Latin-America as Americans now have is due principally to its efforts. Likewise, much of the information that the Latin-American countries have about one another and about the United States has been due to its efforts.

Two important pieces of work which it might be well for the Pan-American Union to undertake in addition to its routine duties are: (1) the adoption of some plan whereby



the fact of the location of its headquarters in Washington may be mitigated in the eyes of some Latin-American and foreign observers and (2) the extension of the educational work which it has successfully prosecuted in other directions into the public elementary and high schools. It is in the public schools that most of our citizens finish their scholastic training; and no present-day school training should be considered complete without the study of Latin-American civilization through courses in history and general reading.

The adoption of the plan for placing the Pan-American Union on the basis of a convention is highly to be recommended as the only practical means of assuring the Pan-American Union a firm and permanent foundation and making it in reality what Dr. Alvarez calls "the directive center of a truly American conscience and public opinion whose influence, especially on the moral side, will make itself felt in the whole New World."

*Consideration of the Reduction and Limitation of Military  
and Naval Expenditures on Some Just and  
Practicable Basis*

The subject of the limitation of armaments will gain added significance at the Fifth International Conference through the presence of Secretary of State Hughes at Santiago. In general, the topic is of the kind dear to Latin-American hearts. Its idealism is in itself attractive, and its connection with all the progressive movements of the age should make it admirably suited to keen analysis and lofty, altruistic eloquence. Moreover, South America furnishes one of the earliest examples during our contemporary period of a practical attempt to solve the problem of reduction of armaments. In 1902 Argentina and Chile concluded a "Convention on Naval Armaments" whereby the governments in question agreed to limit their fleets until "a prudent equilibrium" should be secured.

Theoretically, nearly every thoughtful Latin-American

may be said to be an enthusiastic advocate of any project resembling that of the reduction of armaments. The Latin-American republics are not pressed for room and will not be for a time too remote to be considered among immediate probabilities. None of them can encroach on the territory of another in the face of the watchful great nations of the world. The Monroe Doctrine, as it is maintained at present, and the relations of the Latin-American republics with the European powers preclude the possibility of foreign aggression. The settlement of disputes by arbitration and the sentiments exemplified by the erection in 1904 of the statue of the Christ of the Andes—on the base of which is inscribed this splendid sentence, "Sooner shall these mountains crumble into dust than the people of Argentina and Chile break the peace to which they have pledged themselves at the feet of Christ, the Redeemer"—appear to make armies and navies a wholly unnecessary item in Latin-American civilization, except for policing purposes.

In spite of these good reasons, nevertheless, the limitation of armaments is likely to meet more opposition in Latin-America than among the signers of the major disarmament agreement. The question of the burden of taxation imposed by the maintenance of armies and navies will not bother Latin-American administrations nearly as much as it has bothered the great powers. The traditional feeling of security consequent on the control of the strongly entrenched military system will not voluntarily be dropped by many of the Latin-American executives. The sentimental appeal of military pomp to large sections of the Latin-American public and the ambition of aspiring leaders to have the backing of an actual or prospective "army" are also strong factors against the probability of military curtailment at the present time.

Above all, certain practical considerations stand in the way of the adoption of a definite plan for limitation—though a resolution favoring limitation in a general way may well be passed at the Conference.

In the first place, international suspicion—which is a highly practical consideration—still reigns over Latin-

America. Mexico does not feel sure as to the ultimate aims of the United States and resents the withholding of recognition; Chile and Peru, though the Tacna-Arica controversy is virtually settled, President Harding having accepted the invitation of both disputants to serve as arbitrator, do not feel cordially disposed toward each other, and claims have already been made by a Peruvian official that Peruvian residents in the Tacna-Arica region are not being properly treated by Chilean authorities; and the Central American Conference held at Washington during the past few months has led to no definite result with regard to union.<sup>6</sup> In the second place, Brazil has lately suffered from internal disturbances, and the A. B. C. powers of South America, in recent preliminary discussions regarding the question of reduction of armaments, have failed to strike the note needed to persuade or convince Latin-America as a whole of the present utility of reduction of land and naval forces. The situation in Latin-America is much the same as that existing in a large area of Europe, with the difference that the smaller republics are more likely to lean toward limitation of armaments than the larger states. The only outstanding prospect of agreement on limitation of armaments would seem to rest on such personal triumph as Secretary Hughes, preceded by the prestige of his remarkable success in this field, may score at the Conference.

The foregoing is not sketched for the purpose of intimating that international peace and friendship in Latin-America are in a precarious position today. In fact, as Secretary Hughes declared in his Cleveland speech of November 4, 1922, it should be a source of self-congratulation to the American countries that peace reigns on the whole Western Hemisphere. Nor can there be any justification for belief of serious disturbances in the immediate future. Interna-

---

<sup>6</sup>As this paper goes to press, it is reported that the Central American republics have signed an agreement on limitation of land armament. The writer does not think that this action will lead to a similar agreement at Santiago, but does believe it vital for future treatment of the problem.

tional relations, immigration, commerce, communications, and the silent pressure of the great powers of the world encourage the feeling that serious conflict is almost an impossibility. But the growth of nationalism, material progress, lack of a genuine public opinion in most of Latin-America, the age-old power of individual politicians and political orators, and the fanatical devotion to party which has always characterized Latin-Americans, keep alive a sense of uncertainty and the expectation that something may happen some day somewhere. It is this combination of feelings and circumstances which evidently inspired the following paragraphs in an article in the *Revista de Revistas* (Review of Reviews) of Mexico some years back:

Nations are like persons: they need to measure themselves with somebody, to have a rival. I do not venture to assert that the rivalry of Argentina and North America is as yet a fact, but it will come to pass inexorably. The Yankees are the obsession, at present unexpressed and secret, of Argentinians.

One can even surmise a certain tendency toward jingoism in Argentina. This country will probably feel very soon a sensation of superabundance; and then there will ensue an ostentatious and arrogant nationalism whose consequence will be imperialism. It will want to dominate, to absorb, and to spread out. It is then that the small republics which border on the Plata and the Paraná will be fused with Argentina, forming the United States of South America. Two wars will be inevitable: one against Chile and the other against Brazil. When the great nation of the Plata is thus constituted, the two colossi of the North (the United States) and the South will stand face to face. They will be two fatal adversaries.

If this seems fantastic to us in so far as it involves the United States, and certainly not typical of the best Latin-American prophecy, we must not forget that many Latin-American observers foresee periods of intense jingoism in each of the A.B.C. countries. There are trained thinkers in all the Spanish-speaking countries of South America who are apprehensive of the absorption by Portuguese-speaking

Brazil of all the republics on or near its frontiers—that is, of all the republics except Argentina and Chile. Similar predictions, on a smaller scale, have been made with regard to several of the more important republics having frontiers on weaker states. Whether such predictions are made for the purpose of inflaming local sentiment or in a spirit of impersonal analysis, the result is the same. The virus of suspicion is provided with a propitious environment, and in this particular year of grace, Latin-American governments can find no comfort in the plight of disarmed or partially disarmed countries in other parts of the world.

In case no definite action on the limitation of armaments is taken at the Fifth Conference, a proposal which the Uruguayan government promises to make will serve as a transition to later treatment of the armament question.

At this moment (said Dr. Buero, the Minister of Foreign Affairs of Uruguay, in July, 1922) President Brum and I are very much busied with the preparation of the bases for the program of the next Pan-American Conference to be held at Santiago, Chile, in March, 1923. Our government will propose the creation of a league of American nations on a footing of absolute equality. Let us hope that our idea will be approved, and that if, as we confidently trust, the league is formed, the Republics of the three Americas will become stronger and more closely united. In the league we shall be able to discuss our American affairs and prepare to work in harmony at the great conferences in which the affairs of the whole world are discussed.

The interest aroused by the Uruguayan proposal is already widespread in Latin-America, and officials of several republics have declared that they would give it their hearty support. If equal participation can be guaranteed all the American countries, the arguments for the establishment of a League of American Nations should prove even stronger, more immediately practicable, and less subject to suspicion than the arguments presented in behalf of the World League of Nations. It would supplement ex-Presi-



dent Wilson's plan for broadening the Monroe Doctrine, and possibly bring about the substitution of a true Pan-American Doctrine in all directions for the one-sided Monroe Doctrine. It may easily become the outstanding topic of the Conference, particularly as it will originate with a progressive Latin-American government and cannot be charged to any selfish or domineering motive of the United States, and should appeal to all the American countries as the term toward which Pan-Americanism in its broadest aspirations should ultimately tend.

*Consideration of Standardizing of University Curricula and  
Mutual Recognition of Professional Degrees  
Among the American Republics*

Reciprocity in the recognition of academic degrees and certificates of study and in the practice of liberal professions is general throughout Latin-America, most of the countries having taken official action in favor of this important courtesy toward neighboring states, and many of them, even toward the countries most distant from them. The United States alone has not signed any conventions to these effects, and the only agreements of a scholastic nature which exist between any United States organizations and the Latin-American countries are the one entered into by the University of California and the Government of Chile in 1919 for the interchange of professors and the arrangement made this year (1923) between the University of Buenos Aires and Notre Dame University for the mutual recognition of academic degrees.

At first blush it might seem that the United States has been unusually illiberal in the field of liberal educational reciprocity. But that is not the fact at all. The explanation is found in the circumstance that there is no federal control of education in the United States and that it is therefore impossible for the United States as a federal entity to sign agreements with other governments on this head. Any official action would have to be taken by state legislatures or by individual institutions. It is to be hoped

that a movement in favor of educational reciprocity will some day be inaugurated throughout the United States. The problem ought to be taken up seriously by some such body as the National Educational Association.

The gravest defect in our educational relations with the other American countries, and one that ought to be corrected without delay, is the common attitude of many—perhaps most—of our universities toward Latin-American students seeking entrance. It has been the privilege of the writer to observe in several universities the procedure through which large numbers of Latin-American students have had to pass before being granted admission, and in nearly every case he has had to conclude that an intense provincialism underlies the application of our rules to these foreign students. Neither the administrative authorities nor the faculties appear to realize that secondary education in the more advanced Latin-American centers is equal to the secondary education of continental Europe, that the students coming from the *colegios* or *liceos* are more mature than our own students, that their abilities are usually greater than those of our "average" students, that they are perfectly qualified to go on with our university studies provided they can show a diploma or an official certificate of graduation from a *colegio* or *liceo* of good standing, and that the work they have done in the *colegio* or *liceo* has carried them through the equivalent of our first two college or university years. He sees no reason for modifying the following suggestion made elsewhere, and believes that even in the matter of English our university authorities are too meticulous with Latin-American students during the early days of their residence:

The Latin-American graduate of a good *colegio* or *liceo* should be entitled to enter the senior college of any American university, with perhaps, the proviso that he elect some laboratory work in addition to what he has done in his own school. The narrow insistence with which most of our universities require that a foreigner of excellent educational antecedents shall meet our freshman-sophomore requirements to the letter, or forfeit his

chances of securing our university degree, is unworthy of our spirit of fair play and destructive of that comity and cooperation which should exist above all in academic circles.<sup>7</sup>

Latin-American students are coming in increasing numbers to our schools, particularly since conditions have changed so markedly in Europe. On their return to their own countries they wield an influence far greater than any dreamed of by our own students in their home localities. Almost without exception they are loyal to the American universities which they have attended and are intelligent friends of the United States. Surely, their admission to our schools should be regulated on principles as broad as those which have obtained in Germany and France. It is not a question of giving away our degrees, but of making it possible for students graduated from properly qualified schools in Latin-America to pursue work at our universities without trivial annoyances.

*Consideration of Measures Adapted to Secure the Progressive Diminution in the Consumption of Alcoholic Beverages*

The abuse of alcoholic beverages in the United States, with its attendant degradation and impoverishment, brought on nation-wide prohibition. In the Latin-American countries strict prohibition will not for a long time seem imperative to their citizens, and that, for reasons similar to those given by the French, the Spaniards, and the Italians. Drinking *per se* has not been of the same kind or extent among the people of southern European origin as among Anglo-Saxons. In the United States, women have condemned it as a dangerous social habit, and have organized against it. Latin-American women are also beginning to attack the evil in a concerted body, but at present the chief opponents are the State and the business interests. Chile,

---

<sup>7</sup>*The New Latin-America*, 1922, Thomas Y. Crowell Company, New York; pp. 239-240.

particularly, which has great industrial ambitions, has found it necessary to take active steps to control excessive drinking, and has accomplished much in spite of the power of the grape-growers. Bolivia and Peru have passed temperance laws for the purpose of protecting the Indians against themselves. For like reasons, other Latin-American countries are now conducting a systematic campaign against alcoholism. As industrial conditions advance, the campaign will probably take in many classes at present unmolested and may finally reach even the upper classes, whose drinking does not noticeably affect industrial or agricultural efficiency.

Practically every Latin-American republic has within the past ten years adopted measures for restricting the consumption of alcoholic beverages. In Peru, the teaching of the evil effects of alcoholic drink has been obligatory in the public schools since 1913. In a number of republics, National Anti-Alcoholic Leagues are doing excellent work in combatting alcoholism. In the following, definite legal action has been taken, as indicated below:

*Bolivia:* Saloons and bars closed on Sunday.

*Chile:* Bars closed from Saturday evening to Monday morning and on holidays; regulations against "bootlegging"; prohibition of sale of liquors within a certain distance of churches and educational buildings; establishment of "dry zones" about mining and nitrate camps.

*Dominican Republic:* Prohibition of the sale or giving of liquor in hotels, restaurants, or saloons.

*Honduras:* Prohibition of the sale of liquor where agriculture, mining, and railroading are carried on.

*Mexico:* Several states have regulated the manufacture and sale of liquors.

*Panama:* Regulation of the sale of liquors in the cities of Panama and Colon.

*Paraguay:* Establishment of "dry zones."

*Peru:* Prohibition of the sale of liquors on Saturdays and Sundays.

*Uruguay:* Regulation of the sale of liquors; prohibition

of consumption of liquors on naval vessels of the Republic and in army units and buildings.

Besides governmental regulation and the assistance furnished by temperance societies, effective work against alcoholism is performed by many of the great mining and commercial companies, such as the Guggenheim and Grace companies, which not only enforce temperance among their employees, but also provide churches, schools, community centers, motion picture theaters, and the like for the purpose of turning the attention of their workmen from the craving for liquor.

With practical and vital topics like the above, it can readily be seen that the International Conference of American States is not apt to lose itself in purely theoretical and aimless discussion. Nor will the results of the meeting end with the meeting itself. The resolutions taken will in due course, and wherever possible, be made law by action of the different governments, and subjects not definitely dispatched now will be treated in later conferences.

Nobody can read the proceedings and available documents of the various Pan-American Conferences without coming to have a high respect and admiration for the important work accomplished by them. It is to be regretted that the press of this country devotes so little space to these meetings, for to follow their deliberations is in itself an education in subjects in which the average citizen of the United States needs most to be educated.



## NEWS AND NOTES

### ARGENTINA

Under the auspices of the American Academy of History, the first national history congress was opened in Buenos Aires, representatives of libraries, government delegates, and other interested persons being present.

Following the joint agreement between the governments of Argentina and Chile relative to the management of the Transandean Railway, resolutions have been adopted in both countries for the electrification of the line.

An expert from the Department of Agriculture of the United States has been engaged to reorganize and perfect the statistical sections of the corresponding department of the Argentine government.

### BOLIVIA

The Standard Oil Company has signed a contract covering petroleum concessions on approximately one million hectares in three Bolivian provinces. The contract is to run for a term of fifty-five years during which the concessionaires agree to renounce all rights of diplomatic intervention in case of disputes.

A critical situation in politics has resulted from the lack of harmony between the Executive and certain factions in the legislature. Minorities in both houses have determined to launch an aggressive policy against the President; and a recent incident in the campaign was the action of a group of the opposition in memorializing the President to resign.

### BRAZIL

Dr. Primitivo Moacyr has been placed in charge of the task of coordinating and publishing the documents of Congress. All subjects found in the congressional annals are

being carefully arranged so that easy access to any topic may be had, fifty-five volumes having been published prior to the end of 1922.

The executive department of government has been authorized to undertake the construction of not to exceed 500 houses to be occupied by public officials and laborers employed by the Federal government.

Although many tribes of wild Indians inhabiting the Amazon region have not been enumerated, latest figures indicate the population of Brazil as exceeding 30,000,000 inhabitants. This places Brazil ahead of Spain, and preceded only by France and Italy, as the most populous Latin country.

#### CENTRAL AMERICA

On August 20, 1922, the Presidents of Nicaragua, Honduras, and Salvador entered into an agreement relative to the extension of the treaty of peace and friendship signed in Washington on December 20, 1907, by the five Central American republics. As a result of this meeting, a conference of the five republics was held in Washington beginning December 4, 1922. A proposition for a Central American Union was voted down by the conference, although a future conference to be called in January, 1926, was provided for.

Negotiations for a general treaty of amity and for an international court of arbitration were soon under way, and on January 12, the drafting of this treaty was begun. Just prior to the adjournment of the conference on February 7, 1923, the following conventions, in addition to the treaty of amity, were signed: For free trade, for the establishment of a Central American court, for the institution of international commissions of inquiry, for uniform workmen's protective laws, for uniformity in the liberal professions, for electoral legislation, for agricultural experiment, for exchange of students, for extradition, and for permanent Central American commissions. The first of these—the one relative to free trade—was not signed by Costa Rica; with this exception the conventions were signed by representa-

tives of the republics, Guatamala, Salvador, Honduras, Nicaragua, and Costa Rica.

#### CHILE

Preliminary reports of the census of 1920 show the total population at that time to have been 3,734,723, almost equally divided between men and women. Santiago with a population of 507,296 was the largest city of Chile.

A government commission is preparing a report on changes deemed advisable in the mining laws.

The protocol signed at Washington between Peru and Chile on July 22, 1922, designating the President of the United States as arbitrator of the Tacna-Arica dispute, after having been ratified by the Chamber of Deputies, met with considerable opposition in the Chilean senate. Although the Senate succeeded in over-throwing the Ministry because of its conduct of the Tacna-Arica negotiations, the Chamber on November 30 accepted the protocol by two-thirds majority and thus succeeded in over-riding the Senate reservations. Although the three-month period within which ratification should have taken place had elapsed before the final ratification, Peru agreed to overlook the delay. The ratification has been accepted and the matter is now definitely in the hands of the President of the United States as arbitrator.

#### COLOMBIA

A railroad congress to discuss plans for a country-wide railroad system is to be called by the Society of Colombian Engineers. Bills drafted by this society are to be presented to Congress in order that there may be a systematic development of railways.

A North American financial expert has been placed in charge of reorganization of the public treasury and, to a certain extent, in control of the expenditures of a loan of \$80,000,000 negotiated with American bankers.

The first installment of \$5,000,000 to apply on the \$25,000,000 payment to be made to Colombia by the United States has been paid.

#### COSTA RICA

By decree of May 20, 1922, an office of control of expenditures of government funds was established. The chief of the office is to be appointed by Congress; he will coöperate with the Ministry of the Treasury especially in regard to the budget and will also have oversight of all government employees.

#### CUBA

Recent data indicate the population of the island to be 2,889,004. Havana with a population of 363,506 is by far the largest city, although the urban population is 1,290,855 or 44.7% of the total population.

November elections, national, state, and provincial, resulted in a land-slide for the Liberal Party.

As a result of the efforts of woman suffragists, a national woman's congress is being organized to obtain equal social and political rights for women.

#### GUATAMALA

In its review of the economic situation of the republic, a commission appointed by the government has recommended stabilizing the national currency, minting nickle and copper coins to replace paper money of small denominations, making an official budget, developing national production, establishing banks of issue, and establishing agricultural schools.

#### HAITI

All former secretaries of foreign affairs, delegates to international conferences, diplomats, and others versed in in-

ternational affairs have been united into a diplomatic council within the department of foreign affairs. The duties of the council are to execute the acts of Pan-American conferences, to furnish the Pan-American Union any information of use to it, and to study national questions for the guidance of the Department of Foreign Affairs.

#### HONDURAS

According to figures recently made public, the population on December 31, 1921, was 662,422.

On November 15th Honduras notified the League of Nations of its intention to withdraw from the body.

#### MEXICO

A law passed by the legislature of Vera Cruz levying a 2% tax on all oil products in the state has been declared invalid by the Federal authorities on the ground that the right to tax oil belongs exclusively to the Federal Government.

Senor Gustavo Lainz de Sicilia, leader of the Fascisti movement in Mexico claims on a basis of a present estimated membership of 100,000 that within six months the organization will have more than one million members. Unlike the corresponding Italian organization, the Mexican Fascisti has not been organized on a military basis, but will confine its efforts to an economic control of the government.

Another recent political clique is a league having as its purpose the collective interests of villages relative to land titles, and the restitution of public land.

The 1923 budget calls for a larger expenditure for education than for the war department, the former being allowed 45,000,000 pesos while the latter received 33,000,000 pesos.

#### PANAMA

Rather than contract a debt of ten million dollars as advocated by the government, the National Assembly has de-



cided to dispose of six million dollars worth of New York City real estate which had been purchased with funds obtained from the Panama Canal agreements with the United States. This action leaves Panama without national debt.

#### PERU

Preliminary steps have been taken toward settling boundary questions between Peru and Ecuador and between Peru and Colombia.

A commission, at present, is engaged in the reformation of the civil code. It has been decided that the revised code shall consist of an introduction and five sections devoted to individuals, family rights, public rights, inheritances, and obligations, and contracts.

#### SANTA DOMINGO

Juan Bautista Vicini Burgos has been appointed provisional President by the Dominican Commission. American troops will not be withdrawn, however, until a constitutional government has been established.

#### URUGUAY

The recent elections have placed Senor Jose Serrato, candidate of the Colorado party, in the President's chair.

#### VENEZUELA

On June 19, 1922, a new constitution for Venezuela was published superseding that of 1914 which had been in operation just six days more than eight years.

The National Congress has passed a law governing the appointment, promotion, suspension, and responsibility of members of the diplomatic corps.

## NEWS AND NOTES

EDITED BY B. F. WRIGHT, JR.  
*University of Texas*

### NOTES FROM ARKANSAS

PREPARED BY THEODORE G. GRONERT  
*University of Arkansas*

Governor Thomas C. McRae's message to the Forty-fourth General Assembly stressed the problems of taxation and education. The governor called attention to the inadequacy of the present property tax to meet the educational needs of the state. The message points out that the total amount raised for educational purposes by the general property tax amounts to \$11.46 per annum for each child of school age, an actual per capita levy on the total population of \$5.11 per annum. The present per capita outlay for education, the governor points out, is manifestly inadequate and the way out must be found in new and better taxing methods. As a solution for the problem the message suggests that the state property tax be taken off, and each county be made an administration unit to levy such property taxes as are required for local purposes. To facilitate administration, it is further suggested that the township assessor's office be abolished and that county boards of equalization be established in their stead.

The most significant section of the message dealt with the constructive suggestions on taxation. In lieu of the state property tax the governor suggested a levy on intangibles, on corporate and individual incomes and the application of franchise and severance taxes. Regarding the revenue anticipated from the severance and business taxes the message states: "Our entire educational system should be supported by severance taxes on all our resources and, in addition a personal profit or business tax should be placed on individuals and partnerships. The fund derived from

these two taxes to be dedicated and set apart for educational purposes." The governor calls attention to the need for constructive measures dealing with agricultural education, conservation, and child welfare. The message also emphasizes the need of constructive highway legislation if the state hopes to receive any additional Federal aid. To provide funds for such highway improvement it is suggested that the motor tax be increased, and that a sales tax be levied on gasoline.

The governor's message suggested the submission of a constitutional amendment restricting local legislation and the condition in the Forty-fourth General Assembly would seem to justify the suggestion. The records show that up to February 25 a total of 1342 bills had been introduced in the legislature, of which approximately 1300 were special or local bills.

Up to the date, February 28, very few general laws of significance have been up for final consideration. Two bills that attracted state wide attention had to do with the University. The first bill providing for the removal of the Agricultural School from Fayetteville to Russellville was warmly debated in the lower house but was defeated by a majority of fifteen. The second bill providing for a referendum on the question as to whether the University should remain at its present location or be removed to Little Rock, Little Rock to guarantee a fund of \$1,000,000 for land and buildings, was also up for final consideration. After a committee of the House had acted unfavorably on the referendum, the Senate committee reported favorably and the upper house proceeded to a consideration of the bill. The opposition moved to postpone the bill indefinitely and after sharp debate the motion to postpone was carried by a vote of 17 to 15. The proponents of the measure announced after the vote that they would appeal the removal question directly to the people through the Initiative and Referendum.

A general act was passed by both houses providing that railroads within the state should furnish free passes to the members of the General Assembly. Railroad officers assert

that they will be governed by the decisions of the courts on this unusual "pass legislation."

A severance tax along the lines suggested in the governor's message was one of the first general acts passed. This law places a tax of  $2\frac{1}{2}\%$  on practically all products severed from the soil or waters of the state. Two products, bauxite and lumber, are specifically excepted from the  $2\frac{1}{2}\%$  levy. In lieu of such levy, bauxite is taxed at the rate of 25 cents a ton and lumber at the rate of seven cents per one thousand feet.

### NOTES FROM OKLAHOMA

PREPARED BY MIRIAM E. OATMAN  
Norman, Oklahoma

**OKLAHOMA'S NINTH LEGISLATURE.**—After two years of experience with a state government in which the governor and the senate were Democratic while the house of representatives was Republican. Oklahoma has elected a Democratic governor pledged to the program of the Farmer-Labor Reconstruction League, and a legislature whose houses are both Democratic. Within the ranks in each house there is division between the "old line" Democrats, who accuse Governor Walton and his supporters of "radicalism," and the Democrats who support the administration. The latter element appears to be the stronger.

**Governor Robertson's Message.**—On Tuesday, January 2, the Ninth Oklahoma Legislature convened in Oklahoma City. The retiring Governor, J. B. A. Robertson, sent to the legislature a lengthy message, in which he urged the establishment of intermediate courts, or district courts of appeal, in order to relieve the congestion of the supreme court docket, which is now three years behind schedule. Other recommendations include the repeal of the present law setting a limit of \$200,000 to the deficiency certificates which may be certified by the governor during any fiscal year, changes in the management of the bank guaranty fund, and a general increase in the salaries of state officers,

including a change in the governor's salary from \$4,500 to \$12,000 a year. During the first week of the legislative session a bill embodying the suggested salary changes was defeated in both houses.

*The Executive Budget.*—According to Oklahoma's budget law, the governor is required to submit to the legislature at the opening of every session, a budget covering estimated receipts and recommended appropriations and expenditures for the two fiscal years next ensuing. The fiscal year commences on the first of July. This means that if the present legislature, or any legislature convening at the opening of a year when a new governor takes office, should accept the budget as submitted, the new governor would be compelled to work for two and a half years under a scheme of finances arranged by his predecessor. There is nothing less likely, however, than passage of the budget as prepared by the chief executive. The budget submitted by Governor Robertson two years ago was used by the legislature chiefly as a point of departure. Although the political divisions which obtained at that time are now more or less healed, the traditional legislative jealousy of executive "encroachment" or "dictation" appears to be doing its work, the budget plan which was sent to the legislature at the opening of the session has been sunk without a trace, and appropriation bills are being prepared after the good old-fashioned hit-or-miss way.

*Governor Walton's Program.*—Governor Walton's first message to the legislature included many recommendations which were contained in the Reconstruction League's platform, such as the purchase by the state of a cement plant whose product should be used in public building projects, the amendment of the workmen's compensation law, the lending of state credit to cooperative associations of farmers for the erection of elevators and warehouses, the furnishing of free textbooks to school children, and the amendment of the State constitution in order to make women eligible to all offices. A soldiers' bonus was urged, as was a law requiring public utilities to pay taxes on the same valuation



which the corporation commission allows them as a basis for rate fixing. A later message again urged attention to these matters, and to various others, such as a road-building program and a revision of the educational system.

*Freak Legislation.*—Little of consequence has been accomplished by the legislature at this writing, though it has been in session nearly two months. A summary of its accomplishments in so far as they are of interest to political and social scientists, will appear in a later number of this *Quarterly*.

Freak legislation has been introduced in its usual abundance. The senate has passed a stringent anti-cigarette bill, and the house has added to the gaiety of nations by attaching to the free text-book bill which it passed recently an "amendment" stipulating that none of the money therein provided should be used for the purchase of texts or copyrights which teach "Darwinism" or "the materialistic interpretation of history."

#### NOTES FROM TEXAS

PREPARED BY THE EDITOR OF NEWS AND NOTES

THE WORK OF THE THIRTY-EIGHTH LEGISLATURE.—During the sixty-five day session of the legislature which has just adjourned, relatively few bills of major importance were enacted, although some twelve hundred measures found a place on the calendar. Most of the two hundred or more bills passed were, of course, of purely local character and importance, such for example, as the incorporating of school districts, the enacting of road laws, fixing the time of holding court in a number of judicial districts, and adjusting other matters dealing with local courts. Among the significant bills which finally passed were: that creating a Texas Technological College in West Texas, the one providing for an educational survey of the state, the bill merging all insurance administration into a separate state commission of insurance, and, perhaps, the most outstanding so far as immediate interest is concerned, a series of appropriation

bills which altogether call for the appropriation of nearly eight million dollars.

Perhaps the most important measure which failed to pass was the resolution calling a constitutional convention. Of the numerous constitutional amendments proposed only two were submitted. One would raise the Confederate pension tax from five to seven cents, the other would permit highway legislation in conformity with federal aid requirements, the first to be submitted at the general election of 1924 and the latter on the fourth Saturday of next July.

Among the important bills which failed to pass were: the public utilities bill, the carbon black measure, the bill to require reading the Bible in public schools, the bill enlarging the scope of the intangible assets tax law, the bill advocated by Governor Neff for the removal of local law enforcement officers who failed to adequately enforce the law, the anti-cigarette bill, the bill prohibiting the teaching of evolution in tax-supported schools and institutions, the measures whose purpose it was to provide for changes in the state prison system and the re-location of the state penitentiary, and the bill to increase the crude oil production tax.

Of thirty-eight revenue bills introduced in the House, only two were finally passed, neither of them being of major significance so far as general revenue is concerned. The two measures passed provided for a one cent a gallon tax on gasoline and for a two per cent tax on sulphur. The proceeds from the former are to be divided between the school fund and the highway fund, the former receiving one-fourth, the latter three-fourths. The sulphur tax, which at best will produce but a relatively small revenue, is to be for general purposes.

A list of bills passed by this legislature which are of any significance at all will be found in the *Dallas News*, March 15, 1923.

A few days before the adjournment of the legislature Governor Neff issued a call for a special session to meet immediately after the conclusion of the regular session.

In this call he stated that the special session would be absolutely necessary because of the failure to pass necessary appropriation bills and bills providing adequate measures for the enforcement of state law. However, he later expressed his willingness to permit the legislature to adjourn immediately after the meeting of the special session if the legislature itself was willing to assume responsibility for its failure to pass much-needed legislation. This was the course followed by both houses, and it is now expected that a special session will be called some time during the spring at which the more pressing questions left over from the regular session will be taken up.

## PERSONAL NOTES

Preparations for the fourth annual meeting of the Association at Southern Methodist University, Dallas, Texas, April 2, 3, 4 are about completed. The program committee composed of Professors J. P. Comer, Clyde Eagleton, Comer Woodward, and S. H. Moore of Southern Methodist University, Professor D. Y. Thomas, University of Arkansas, Professor F. F. Blachly, University of Oklahoma, Professor C. F. Coan, University of New Mexico, Professor G. P. Wyckoff, Tulane University of Louisiana, Professors M. R. Gutsch and W. M. W. Splawn of the University of Texas, and Mr. G. B. Dealey and Elmer Scott of Dallas, Texas, has decided upon a program of three days, devoting sections to Public Law, International Relations, History, Government, Economics and Sociology.

Judge C. B. Ames, of Oklahoma City, President of the Association and former Assistant Attorney General of the United States, has been named general counsel for the Texas Company with headquarters in New York.

Professor W. M. W. Splawn of the Department of Economics of the University of Texas has been appointed by Governor Pat M. Neff on The Railroad Commission of Texas.

The leave of absence of Professor Herman G. James of the Department of Government of the University of Texas has been extended and he will spend the remainder of the academic year in his researches upon the government of Brazil.

Mr. William A. Jackson of the Department of Political Science of Baylor University is on leave of absence and is holding a fellowship in the Department of Political Science at the State University of Iowa.

Friends of Mayor E. R. Cockrell of Fort Worth are predicting his re-election in the municipal election on April 3. Mayor Cockrell was Professor of Political Science at Texas Christian University before entering the public service two years ago.

It is announced that Dean Roscoe Pound of the Harvard Law School will deliver five lectures at the University of Texas during the week beginning April 16.

Dean John C. Townes, of the Law School of the University of Texas, has resigned, effective at the beginning of the next school year. The Regents have selected as his successor Professor George C. Butte of the law faculty. Professor Townes will continue his teaching work.

The Eleventh Annual Convention of the League of Texas Municipalities will be held at Bryan, Texas, May 9-10, 1923.

Mr. B. F. Wright, Jr., of the Department of Government, is the author of a new bulletin just published by the Division of Government Research on "The Merit System in American States with Special Reference to Texas."

Under the auspices of the Bureau of Extension of the University of Texas and at the request of the Texas League of Women Voters, The Texas Congress of Mothers and Parent Teachers' Associations, and the The Texas Federation of Women's Clubs, a second Conference on Citizenship, Education and Home Welfare was held, February 5-9, 1923.



## BOOK REVIEWS

EDITED BY MALBONE W. GRAHAM

*University of Texas*

WARSHAW, J. *The New Latin-America*. (New York: Thomas Y. Crowell Company, 1922. Pp. xxii, 415. Price \$3.00 net.)

The tide of books on Latin-America continues to rise, a very good omen of a better understanding of our southern neighbors. Professor Warshaw's book, to which Dean James E. LeRossignol has written an introduction, was written, the author tells us, "to present a faithful picture of progressive Latin-America, the Latin-America of today, the Latin-America which is still too generally unknown."

In his first chapter Professor Warshaw sets forth some plain facts of geography, many of which are unknown to many who may consider themselves slightly above the "average" citizen of the United States. After pointing out the end of isolation in travel, trade, and immigration, he devotes four chapters to agriculture, manufacturing, and commerce. Herein he points out that our foreign trade with Latin-America increased from \$2,253,191,295 in 1919 to \$3,256,285,601 in 1920, when it was about one-fourth of our total foreign trade. To hold this trade is the problem.

No writer on Latin-America can ignore the Monroe Doctrine. After pointing out the "North American peril" which overhangs the smaller Latin-American countries and the resentment in all countries to the transformation of the Monroe Doctrine from a policy of protection to one of hegemony and imperialism, Professor Warshaw reaches the conclusion that "Reviewing the Monroe Doctrine . . .

in its triple aspect of protection, imperialism, and hegemony from any just angle it is difficult, indeed, to see where, in its relation to the non-Caribbean countries of Latin-America, it has a leg to stand upon." But why except the Caribbean countries? Our dominance in that region he freely confesses is due to "financial and commercial considerations" which "are the motives which mold politics everywhere." Perhaps so, but many will not approve of the cavalier fashion in which the author sanctions the way that Roosevelt and Wilson stretched the Monroe Doctrine to cover a multitude of financial and commercial sins in the Caribbean.

Chapters VIII-XII, dealing with religion, amusements, education, literature, and the position of women, throw much light on social progress in Latin-America. Chapter XIII tells of the great expansion of American investments in Latin-America, catalogues the American captains of industry in Latin-America as Homer catalogued the heroes of Troy and lays open a still greater "field of opportunity" for others yet to come. But, in the final chapter, he draws a picture in "As Latin-Americans See Us" which should cause the would-be prospector to pause and consider his ways and those of the Latin-Americans. An appendix furnishes a lot of geographical and economic information useful both to the student and to the business man.

The book is written in an easy, not to say attractive, style and makes pleasant reading. It is worth while to the serious student of Latin-America.

University of Arkansas.

DAVID Y. THOMAS.

JENNINGS, W. W. *The American Embargo, 1807-1809, with particular reference to its effects on industry.* (University of Iowa Studies.)

The especial merit of this complete and detailed study of Professor Jennings of the University of Iowa is the exhaustive examination he makes of the effects of the embargo on American manufactures, agriculture, and commerce. Familiarity with the literature and concrete facts of the subject, careful organization and thorough analysis

are evidenced in the compact chapters of the book. The scope of the study is indicated by the chapter headings: American Commerce, 1798-1807, Foreign Restrictions on Commerce, The Embargo in Legislation, Congressional Debate, and Diplomacy, The Economic Effects of the Embargo on Warring Nations with Particular Reference to England and her Colonies, The Attitude of the United States toward the Embargo, The Growing Opposition to the Embargo Finally Forces Repeal, The Effect of the Embargo on Manufactures, The Effect of the Embargo on Agriculture, and the Effects of the Embargo on Commerce.

The author shows from a thorough investigation which he reports in well tabulated form that the curtailment of foreign trade increased the demand for home manufactured goods thereby stimulating home manufactures. The effects on agriculture were of an opposite nature. Prices of farm products declined, debts increased, and the mortgaging of property and foreclosing of farms followed. Likewise the effects on commerce were lamentable. Professor Jennings says: "Though many a smuggler made a fortune through dishonesty, many a law-abiding merchant went bankrupt. Many thriving ports groaned uneasily under the blasting effects of the embargo; many involuntarily idle sailors and fishermen cursed with quiet or noisy vehemence while their families endured the agonies of hunger." Again in summary, "If, in conclusion, the effects of the embargo on industry can be epitomized in one final sentence that final sentence will read, 'The embargo stimulated manufactures, injured agriculture, and prostrated commerce.'"

Dr. Jennings sets forth clearly the surrounding circumstances, political, including the diplomatic, and economic, and discusses the reaction of public opinion resulting finally in the repeal of the measure. He has made an extensive as well as intensive research into the literature of the period for concrete and definite proof of every proposition before reaching a conclusion. Another feature of the monograph to be commended is the bibliography including the various types of material gathered from sketches of correspondence,

national, state, and city histories, special historical studies, American newspaper material, and collections of miscellaneous material.

Baylor University.

CHARLES D. JOHNSON.

CASE, CLARENCE MARSH. *Non-Violent Coercion*. (New York: The Century Co. Pp. 423. Price \$3.00.)

In *Non-Violent Coercion* by Dr. Clarence Marsh Case professor of sociology at the State University of Iowa, we have an instructive and readable volume. It does not argue, preach, or philosophize, but it does analyze and treat authoritatively one of the most curious and interesting forms of phenomena in human history. The writer lets the facts, which he presents in abundance, speak for themselves—facts gleaned from sources as old as Confucius and as modern as the movement of Gandhi, the moving spirit of non-violent resistance in India today. The array of details is well organized and presented in a manner so suggestive and stimulating that the reader is fascinated and enlightened upon a subject of such timely and engaging interest.

Beginning with the philosophies of non-violence, Professor Case develops the history of the idea of non-violent opposition in a lucid and analytical manner. After treating of several of the outstanding "pacifist" groups, among them the Bohemian Brethren, the Anabaptists, the Mennonites, the Quakers, and other religious, political, and non-political non-violent sects and parties, he includes chapters under such captions as, *Peace Sectarians and Conscientious Objectors during the World War*—both individual and group aspects, *Psycho-social Traits of Non-Violent Resistants*—both historical and statistical evidence, *Passive Resistance in Theory and Practice*, and *Successes and Failures of Passive Resistance*. These chapters amply demonstrate, by use of historical data, that "passive resistance never was mere passive submission." It was always in the nature of an impersonal and non-violent conflict. Being an aspect of conflict "it naturally merges into constraint and coercion," but of a non-violent sort.

Chapters of especial interest, explaining the non-religious, moral-resistance movement during the recent Great War, are the ones dealing with *Grounds of Contemporary Conscientious Objection* and *Significance of Contemporary Conscientious Objection*. Here the author traces three sources from which, in the absence of a religious tradition, the conscientious objectors might have derived their inspiration: the influence of Tolstoy and other great pacifistic and anarchistic personalities, "the philosophy of international socialism and proletarian solidarity," and "certain pacifying conditions and influences characteristic of modern industrial life apart from any philosophy of reform connected with it." With reference to the significance of conscientious objecting, Professor Case finds it difficult to formulate "a terse and confident statement" for the future, but he does point out that here is a matter that should receive attention in peace-time and not alone in war-time since it is symptomatic of a permanent disturbing condition in modern life. Peace-time manifestations of the same attitude are the industrial strike and the commercial and nationalistic boycott to the treatment of which subjects the author devotes three illuminating chapters.

The last three chapters of the book deal with the subjects: *Non-Violence as Soul-Force*, *Non-Violent Coercion as Non-Coöperation*, and *Social Significance of Non-Violent Conduct*. In the first of these chapters, Dr. Case sketches the remarkable career in South Africa of Mahatma Gandhi, the exponent of the radical doctrine of "soul-force and soul-truth" as powerful moral resistants against law and constituted authority. In *Non-Violent Coercion as Non-Coöperation* the reader follows easily the history of Gandhi in his startling policy of non-violent coöperation inaugurated in India as an important aspect of the Indian revolution. This movement of non-coöperation, which Dr. Case calls "the strangest revolution in human history," had several phases—religious, political, and economic—and was designed to culminate in "civil disobedience." With Gandhi and thousands of his followers in prison the future of the



movement cannot be predicted. But regardless of the ultimate outcome of non-coöperation "we have here presented the most extraordinary manifestation of passive resistance and non-violent coercion in the history of the world." In the chapter on *Social Significance of Non-Violent Conduct*, the socio-psychological principles involved in the form of social behavior treated in this volume are presented. The attempt here is to examine the social processes, the controlling attitudes, and impelling sentiments apart from violent methods and physical force.

The book will hardly make converts to the "turn-the-other-cheek" attitude, but it certainly is refreshing to read such an able treatment on this significant subject at a time when the law of "an eye for an eye and a tooth for a tooth" seems to dominate largely both the behavior of individuals and the conduct of nations, though at the same time both seem to be seeking some more humanitarian means of meeting force and settling disputes.

University of Texas.

W. E. GETTYS.

DOWD, JEROME. *Democracy in America*. (Oklahoma City: Harlow, 1921. Pp. viii, 506.)

A comprehensive study of the problem indicated by the title of this book is no small task. In attempting to set forth the outstanding features of democracy in America, Professor Dowd approaches his subject not from one angle, but from many. Thus he takes up in successive chapters the psychological characteristics of Americans, industrial life, the American woman, domestic life, political life, social organization, and various aspects of religious and intellectual life.

Very little attempt has been made by the author to make an original contribution to the study of this subject. Rather has he gathered together a large number of selections from commentators on American life and institutions. Nearly all of these are Englishmen or Frenchmen. Consequently, this is primarily a study of American Democracy by such excellent authorities as De Tocqueville, Bourget, Dickens,

Arnold, and Wells. The selections are well chosen; they are nearly always interesting, and many of them are enlightening. However, the fact that such a large part of the book consists of quotations written during the nineteenth century (the extracts from De Tocqueville, for example, are especially numerous) means that it contains very little new material, and that certain rather recent and very important changes have taken place in our political, social, and economic life and institutions since the writings of the commentaries.

University of Texas.

B. F. WRIGHT, JR.

BEARD, CHARLES A. *Cross Currents in Europe Today*. (Boston: Marshall Jones Company, 1922. Pp. v, 278.)

This latest product of Professor Beard's pen endeavors to analyze the salient features of the European world as seen in the middle of 1922. Scarcely any aspect of the vital problems of Europe is left untouched and the diplomatic, economic, constitutional, agrarian and social developments are analyzed and synthesized in a peculiarly able manner. Mr. Beard leads us through the intricate labyrinth of official revelations on the diplomatic background of the World War without the least evidence of partisanship, and points out the lessons to be learned from the debacle of the old diplomacy. He concludes that "formal treaties, either secret or published, are not necessary to draw nations into war-like combinations" and points out that "neither the members of parliaments nor the masses of the people knew what was going on behind their backs." "The remedy for this state of affairs in diplomacy lies in no mere institutional changes," he believes. "It lies in an ever growing body of enlightened citizens who do their own thinking and are not deceived by official propaganda."

Of prime importance is his illuminating discussion on the *Economic Outcome of the War*. With clear cut strokes the author pictures the economic results of the Carthaginian Peace. "Commercial disorganization, indemnities, huge debts, inflated currencies, nationalistic rivalries, revolu-

tionary fevers"—these are but a part of the legacy of the war and the peace treaties. It is indeed a gloomy picture of Europe from which the conclusion is drawn that "normalcy" such as the world knew it in 1914, will never return. The author, keenly mindful of the analogy between present-day Europe and the United States under the Confederation, believes that "a new constitution of nations, a grand European League appears to be the only alternative to new combinations, new wars more ghastly and deadly than ever." Despite some hopeful tendencies, it appears to the author that only common bankruptcy, and the excesses of frenetic nationalism can awaken Europe to its senses and bring about a constructive reorganization.

In discussing *The New Constitutions of Europe* the author epitomizes the constitutional changes which half a continent has undergone. While pre-war Europe clung to the constitutional sanctification of individualism and *laissez-faire*, the new constitutions are distinctly of a societarian character and show the impress of the philosophy of collectivism. In brief, "they stand to challenge the whole gospel of the French Revolution." American ideals of government have almost uniformly been discarded while the conciliar institutions bequeathed to the world by the Russian Revolution have exercised far more influence, reaching their greatest fruition in the "anchorage of councils" found in the Weimar Constitution. "But it seems established beyond doubt that the enthusiasm for economic councils is on the wane," the general drift being "toward parliamentary government modeled on British lines" rather than towards a supersession of political by economic institutions.

The cataclysmic transformation of Russia by the Revolution forms Professor Beard's next theme. This is a magnificent sketch "built not upon essays of frenzied propagandists, but upon the soberest accounts given by Bolshevik and anti-Bolshevik writers." It is a brilliant achievement to picture in miniature so perfectly the dynamic forces of so historic an event. It is the author's belief that Russia will become a huge peasant democracy, much like the new agrarian states of Eastern Europe which have established a new,

emancipated peasant class of individual proprietors as the mainstay of democratic and republican institutions. In Russia, "by one of the ironies of history, a vast free peasantry, the bulwark of conservatism, will be created by the orders of the world's extreme radicals." A return of the old regime in his opinion "would be a disaster so great that the mind of man could hardly compass it." Its elimination he believes to have given "a new direction to the diplomacy and international politics of Europe."

In dealing with *Socialism and the Labor Movement* the author analyzes the reasons for the failure of Socialism to prevent war, to consummate a social revolution throughout Europe, and to call into being the recuperative and reconstructive forces necessary for Europe's recovery. But if the socialist movement, both national and international, is bankrupt after war and revolution, the same may not be said of international trade unionism, which "emerged from the war more numerous and more influential than ever"—and much more radical. The chief gain for socialism as a result of a taste of power has been the recasting of its economics. Hitherto purely negative, critical, destructive, socialist economics have turned since the war to a frank and scientific study of the actual processes of production, distribution and management, in a rational and constructive way, not, however, without "a disintegrating influence upon the pontifical assurance of socialist dogma."

Finally, in considering *America and the Balance of Power* Mr. Beard weighs the comparative interest of the United States in Europe and Asia. He believes that America has farsightedly sensed her strategic position between the backward Orient and the industrial Occident and has formulated her national policies more in consonance with Pacific than European interests. In the future America will doubtless continue to feed Europe, but she must outsell all European competitors in Asiatic markets if her present industrial supremacy is to be maintained. Whether this will lead us to "positive Imperialism, naked and unafraid" or to a continued provincialism—"Little Americanism"—or to a policy of drift, the author does not venture to predict.

All told this is a volume of absorbing interest, with a penetrating grasp on international realities, written in an inimitable style, and possessing all the virtues of candor and fairmindedness.

University of Texas.

MALBONE W. GRAHAM.

MACIVER, R. M. *The Elements of Social Science*. (New York: E. P. Dutton and Company. Pp. 185.)

This book is a discussion of the more fundamental aspects of society, and is intended for trained students of social science, and not for beginners.

Its author is a professor of political economy in the University of Toronto, a man of fine scholarship, mature judgment, and broad grasp of the factors determinative of the evolution of society.

He understands as the elements of society the general social structure, the interests which effectuate it, and the evolutionary trend. I know of no other book which, in so small a compass, gives such a penetrating insight into the essential factors of evolution, or which gives such a broad, and comprehensive understanding of social trends.

The book contains the following chapters: *The Nature of Society; The Stages of Society; Society and Environment; Interests and Associations; Structure of Society; The Evolution of Society; The Great Law of Social Evolution*.

University of Oklahoma.

JEROME DOWD.

POUND, ROSCOE. *The Spirit of the Common Law*. (Boston: Marshall Jones Co., 1922. Pp. xvi, 216.)

POUND, ROSCOE. *An Introduction to the Philosophy of the Law*. (New Haven: Yale University Press, 1922. Pp. 307.)

KRABBE, H. *The Modern Idea of the State*. (New York: D. Appleton & Co. Pp. lxxxi, 281.)

For some twenty years Dean Pound has been carrying on a notable work for the development of American law



and legal institutions. However, nearly all of his writings have heretofore been scattered through numerous legal periodicals, and the publication of these two little books will make available certain of the more important results of his careful research and keen thought. Both were originally delivered as lectures; the first at Dartmouth, the second at the Yale Law School. That they are not addressed solely (or, in the case of *The Spirit of the Common Law*, even mainly) to the jurist is shown by the rather simple, even sketchy treatment, the absence of footnotes, and the lack of a bibliography in the first of the two.

The present structure of the common law is the result of a long process of development, and to its making have gone some six major elements: the Germanic and feudal substratum, derived from a period of "strict law"; the philosophy of the Puritans; the institutions and theories that came as a result of the struggle between the courts and the crown; the theory of natural rights; the influence of ideas adapted to the frontier and to pioneer modes of life; and finally the legal philosophy of the nineteenth century. Four of these have been of general influence wherever the common law is found; but two, the Puritan and the pioneer contributions have been largely or exclusively influential in the United States. All except one have been essentially individualistic—only the feudal ideas of relations and of status have been present to temper in some slight measure the rampant individualism of our legal order. Dean Pound believes that we are tending back toward such a situation. Maine's famous generalization to the effect that the progress of law has been from status to contract seems about to be reversed. Such a conclusion is, of course, a result of the author's sociological philosophy of the law.

By a process of judicial empiricism the law has gradually been brought into somewhat closer harmony with the conditions of the present time. Not content with recognizing that the courts make law, he advocates an extension of the freedom of action of the courts in this sphere of their functions. To the end that the ideas of the judges may be made thoroughly consistent with modern social and eco-

nomic life, he favors the providing of official information agencies by which the courts can secure expert and unbiased information concerning the actual workings of the legal rules laid down by them. No principle of law is justifiable unless it bears good fruit.

The point of view expressed in the second of Dean Pound's two books is the same as that already set forth, but the point of departure and the mode of treatment are quite different. It is devoted primarily to an analysis of the principal philosophies of the law, past and present, with special regard to certain important legal problems.

He stoutly maintains that "philosophy" has been a powerful instrument in the legal armory and the times are ripe for restoring it to its old place therein." As in certain periods of the past, the time has come to build; no longer is there any need for analyzing and philosophizing about the law of the past periods of legal development. "We are called upon to formulate the jural postulates of the civilization of the time and place" in order to fit the law to that time and place and to further the development of that civilization.

He next takes up *The End of Law*. A brief summary of the chapter would be practically impossible and certainly of little value; a quotation from his concluding paragraph must suffice: "For the purpose of understanding the law of today I am content with a picture of satisfying as much of the whole body of human wants as we may with the least sacrifice. I am content to think of law as a social institution to satisfy social wants. . . . I am content to see in legal history the record of a continually wider recognizing and satisfying of human claims or wants or desires through social control; . . . a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence—in short, a continually more efficacious social engineering."

In discussing *The Application of Law*, he deals mainly with the question of the extent of judicial discretion that should be allowed. The author concludes that legislation simply cannot deal with all matters, especially those having

to do with human conduct. Just as some sorts of work necessitate individual hand work, so many kinds of cases require the individual discretion of the judge for their proper settlement, and the attempt to fit all sorts of cases into an arbitrary, mechanical system has been and will continue to be a failure.

The remaining three chapters deal with the problems of liability, property, and contract. The author seems to be mainly interested in the need of revising certain phases of the law dealing with these subjects. Thus in the case of the law of liability there is a decided need to get away from the notion that liability can only arise from a definite act of will. We can "explain more phenomena and explain them better by saying that the law enforces the reasonable expectations arising out of conduct."

In the case of the law of contracts, he finds that all of the four theories of contracts that are current today are inadequate, and that "revived philosophical jurisprudence has its first and perhaps its greatest opportunity in the Anglo-American law of contracts."

As regards the law of property he advocates no definite reform. The system of individual private property seems, on the whole, to be for the best interests of society, but "we may believe this without holding that private property is eternally and absolutely necessary and that human society may not expect in some civilization, which we cannot forecast, to achieve something different and something better."

---

Professor Krabbe, who holds the chair of public law in the University of Leyden, although he deals at some length with the nature and ends of law, has the point of view of the political theorist rather than that of the jurist. It is his major contention that the idea of the sovereignty of the state is an outworn concept. In place of a sovereign state, we have the sovereignty of law; a law that does not owe its binding power to a decree of a sovereign power but to its origin in the sense of right of the people. He holds, then, that a spiritual power has taken the place of a personal authority: "what is now in actual practice adorned with the

old name of sovereign is a man or an assemblage of men upon whom the law has laid a task."

He is not so utopian but that he realizes that the law will in fact be shaped in large part by economic interests. A conflict of such interests is inevitable, and the only possible solution is the raising of the plane of the electorate and of its representatives to the point where they can judge such interests objectively and evaluate them with regard to principles of right.

The idea of law as being composed of logical deductions from a system is to him anathema. Instead of dealing in logical deductions, the judge should apply principles of right. The immediate task of jurisprudence is "to further the development of law by establishing the content and mode of operation of the feeling for right." Here he seems to fail to point out clearly the distinction between, and the inter-relations of right and interests, and he also seems to give too important a position to the emotions (see p. 194) in the making of law, at the expense of the intellectual element.

In dealing with the nature of the state, Professor Krabbe holds to the view that whereas the old view was that of a sovereign power ruling over a given group of subjects, the modern idea is that of a legal community, and the essence of the state is found in the operation of a peculiar and independent sense of right among a portion of mankind. Considerable space is devoted to the contention that the state is not a community of interests but that it simply "establishes the legal value of interests."

The final chapter deals with *The International Legal Community*. Here it is pointed out that so long as the old view of sovereignty was accepted, international law was not properly called law at all, but that, on the other hand, the modern idea of the state is quite consistent with the legal character of international law. International law is to be distinguished from national law, not in respect to its source or foundation, but in respect to the community to which it applies. The incomplete and imperfect character of such law is due not to the fact that it rules over sovereign

states but to the defective organization of the international sense of right. One might well question whether there is any such international sense of right at all; possibly it is non-existence rather than defective organization that is at fault. The author is firm in his belief that a world state will some day be an actuality, but he also believes that that day is far off, and that no true world state can arise save by the same long and halting process that has marked the development of the modern national state.

Regardless of agreement or disagreement with Professor Krabbe's conclusions, it will be generally agreed that this is a very suggestive study of certain important problems of present day political theory. American students of this subject are under obligations to Professors Sabine and Shepard for the admirable translation which they have produced. Mention should also be made of the rather extensive *Translators' Introduction* which in itself is a decidedly worth while contribution.

To the reviewer, the unity of these three works is to be found in the fact they represent somewhat different views of a curiously two-fold tendency. In the first place, our political and legal institutions seem to be on a path of retrogression, that is, as Dean Pound indicates, there is a tendency back towards a condition of status rather than of contract, and of reliance upon natural law rather than upon analytical or historical philosophy. Instead of the sovereign state which was the product of the sixteenth, seventeenth, and eighteenth centuries, the ideal seems to be much nearer to that of the middle ages, when, as Professor Carlyle indicates (*History of Medieval Political Theory in the West*, IV, p. 390) the state was not sovereign at all and the only sovereign was the law.

However, these points of retrogression<sup>1</sup> may be very easily over-emphasized, and the second aspect of the tendency which they indicate is undoubtedly the more important of the two. These two writers appear to express a decided

---

<sup>1</sup>The term retrogression is by no means meant to have a condemnatory connotation here.



dissatisfaction with the generally accepted legal and political ideas of the present day. It is not merely that certain minor institutions are in need of modification, but rather that our fundamental theories of the state and of the law are outworn and hence are in need of thorough revision in order that they may better accord with the conditions and demands of present day life. Furthermore, they seem to be in substantial accord that ideas akin to those of natural law are to be instrumental in this era of progress. American theorists have been too prone to believe that natural law long since served its turn and has since been nothing more than a conservative check upon political and social progress. The prevalence of this notion is due mainly to the individualistic influence of ideas of natural rights in the decisions of American courts. But in the history of the progress of political and legal institutions natural law has been a most effective tool in all periods of liberalization. Those who believe that the time is ripe for another such period will welcome such books as those of Professors Pound and Krabbe.

University of Texas.

B. F. WRIGHT, JR.

**STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC.,  
REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,**

Of Southwestern Political Science Quarterly published quarterly at Austin,  
Texas, for October 1, 1922.

**STATE OF TEXAS  
COUNTY OF TRAVIS**

Before me, a notary public in and for the State and county aforesaid, personally appeared Frank M. Stewart, who, having been duly sworn according to law, deposes and says that he is the Editor in Charge of the Southwestern Political Science Quarterly and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, Southwestern Political Science Association, Austin, Texas.

Editor in Charge, Frank M. Stewart, Austin, Texas.

Managing Editor, Frank M. Stewart, Austin, Texas.

Business Managers, none.

2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.)

Southwestern Political Science Association, an unincorporated Association. The officers of the Southwestern Political Science Association are: C. B. Ames, President, and Frank M. Stewart, Secretary-Treasurer.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.)

None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation, has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

**FRANK M. STEWART.**

Sworn to and subscribed before me this 30th day of September, 1922.

[SEAL]

**E. R. CORNWELL.**

(My commission expires May 31, 1923)

# INDEX

Accounting principles. Their use in business management, by Spurgeon Bell, rev. by W. F. Hauhart.....	247
Alley, John and Blachly, Frederick F., Elements of government with history and government of Oklahoma, rev. by M. W. Graham, Jr.....	248
American embargo, 1807-1809, with particular reference to its effects on industry, by W. W. Jennings, rev. by C. D. Johnson	359
American party system, by C. E. Merriam, rev. by B. F. Wright, Jr.....	240
Assets of the ideal city, by C. M. Fassett, rev. by Clara Trenckmann .....	74
Baruch, Bernard M., The making of the reparation and economic sections of the treaty, rev. by C. P. Patterson.....	176
Beard, Charles A., Cross currents in Europe today, rev. by M. W. Graham, Jr.....	364
Economic basis of politics, rev. by B. F. Wright, Jr.....	172
Bell, Spurgeon, Accounting principles. Their use in business management, rev. by W. F. Hauhart.....	247
rev. of Buck, Budget making.....	164
Blachly, Frederick F., John Alley and, Elements of government with history and govenment of Oklahoma, rev. by M. W. Graham, Jr.....	248
and Oatman, Miriam E., Everyday citizenship, rev. by M. W. Graham, Jr.....	248
Book reviews.....	68, 162, 236, 358
Bradley, Glenn Danford, The story of the Santa Fe, rev. by W. M. W. Splawn.....	245
Brazil, The United States and the establishment of the Republic of, by J. F. Rippy.....	39
Brunet, Rene, The German constitution, rev. by C. P. Patterson..	174
Buck, Arthur E., Budget making, rev. by Spurgeon Bell.....	164
Budget making, by A. E. Buck, rev. by Spurgeon Bell.....	164
Capes, William Parr, The modern city and its government, rev. by Clara Trenckmann.....	74
Case, Clarence Marsh, Non-violent coercion, rev. by W. E. Gettys	361
Cases on international law, by J. B. Scott, rev. by D. Y. Thomas	251
Cheadle, J. B., Judicial review of administrative determinations	1
Coan, Charles F., County boundaries of New Mexico.....	252
Conduct of American foreign relations, by J. M. Mathews, rev. by C. P. Patterson.....	69
Constitutional amendments in Texas, by Irvin Stewart.....	145
Controversy over Tacna and Arica and the Washington Conference, by E. M. Crampton.....	126

- County boundaries of New Mexico, by C. F. Coan..... 252
- Courts of the Southwest, by C. P. Patterson..... 77
- Cox, A. B., Intermediate-time credits for agriculture..... 100
- Crampton, Ethel M., Controversy over Tacna and Arica and the  
Washington Conference.....126
- Crime, Economic bases of, by Eyler Simpson..... 306
- Cross currents in Europe today, by C. A. Beard, rev. by M. W.  
Graham, Jr..... 364
- Daggett, Stuart, History of the Southern Pacific, rev. by W. M.  
W. Splawn..... 70
- Democracy in America, by Jerome Dowd, rev. by B. F. Wright, Jr. 363
- Division of Latin-American affairs.....39, 126, 200, 323
- Dollar diplomacy-Leaving Mexico to herself, by D. Y. Thomas... 200
- Dowd, Jerome, Democracy in America, rev. by B. F. Wright, Jr. 363
- rev. of Maciver, Elements of social science..... 367
- Eagle, Edward E., The hope of the future, rev. by C. P. Patterson 178
- Economic bases of crime, by Eyler Simpson..... 306
- Economic basis of politics, by C. A. Beard, rev. by B. F. Wright,  
Jr. .... 172
- Edie, Lionel D., Principles of the new economics, rev. by W. M.  
W. Splawn..... 71
- E. H. Harriman, A biography, by George Kennan, rev. by W. M.  
W. Splawn..... 242
- Elements of government with history and government of Okla-  
homa, by John Alley and F. F. Blachly, rev. by M. W. Gra-  
ham, Jr..... 248
- Elements of social science, by R. M. Maciver, rev. by Jerome  
Dowd . . . . . 367
- Europe today, Cross currents in, by C. A. Beard, rev. by M. W.  
Graham, Jr..... 364
- Everyday citizenship, by F. F. Blachly and M. E. Oatman, rev. by  
M. W. Graham, Jr..... 248
- Fassett, Charles M., Assets of the ideal city, rev. by Clara Trenck-  
mann . . . . . 74
- Hand book of municipal government, rev. by Clara Trenckmann 74
- Fifth Pan-American conference, by J. Warshaw..... 323
- Foreign relations, Conduct of American, by J. M. Mathews, rev.  
by C. P. Patterson..... 69
- Gammon, Samuel Rhea, The presidential campaign of 1832, rev.  
by D. Y. Thomas. .... 250
- German constitution, The, by Rene Brunet, rev. by C. P. Patterson 174
- Gettys, W. E., rev. of Case, Non-violent coercion..... 361
- Graham, Malbone W., Jr., ed. Book reviews.....162, 236, 358
- Near Eastern crisis and world politics..... 181
- rev. of Alley and Blachly, Elements of government with history  
and government of Oklahoma..... 248

rev. of Beard, Cross currents in Europe today.....	364
rev. of Blachly and Oatman, Everyday citizenship.....	248
rev. of McBain and Rogers, New constitutions of Europe.....	236
Gronert, Theodore G., Notes from Arkansas.....	349
Haines, Charles Grove, rev. of Hyde, International law as interpreted and applied in the United States.....	162
Handbook of municipal government, by C. M. Fassett, rev. by Clara Trenckmann.....	74
Hauhart, William F., rev. of Bell, Accounting principles. Their use in business management.....	247
History of the Southern Pacific, by Stuart Daggett, rev. by W. M. W. Splawn.....	70
Holcomb, Murry A., Mandamus to the chief executive of the state	25
Hope of the future, by E. E. Eagle, rev. by C. P. Patterson.....	178
Hyde, Charles Cheney, International law as interpreted and applied in the United States, rev. by C. G. Haines.....	162
Inman, Samuel Guy, Problems in Pan-Americanism, rev. by H. G. James .....	68
Intermediate-time credits for agriculture, by A. B. Cox.....	100
International law as interpreted and applied in the United States, by C. C. Hyde, rev. by C. G. Haines.....	162
Introduction to the philosophy of the law, by Roscoe Pound, rev. by B. F. Wright, Jr.....	367
James, Herman Gerlach, rev. of Inman, Problems in Pan-Americanism .....	68
Japan's Pacific policy, by K. K. Kawakami, rev. by C. P. Patterson	175
Jennings, W. W., The American embargo, 1807-1809, with particular reference to its effects on industry, rev. by C. D. Johnson .....	359
Johnson, Charles D., rev. of Jennings, American embargo, 1807-1809, with particular reference to its effects on industry.....	359
Judicial review of administrative determinations, by J. B. Cheadle	1
Kawakami, K. K., Japan's Pacific policy, rev. by C. P. Patterson	175
Kennan, George, E. H. Harriman, a biography, rev. by W. M. W. Splawn .....	242
Keynes, John Maynard, Revision of the treaty, rev. by C. P. Patterson .....	177
Krabbe, H., The modern idea of the state, rev. by B. F. Wright, Jr.	367
Latin-American affairs, Division of.....	39, 126, 200, 323
News and notes	
Argentina .....	54, 139, 343
Bolivia .....	343
Brazil .....	54, 140, 343
Central America.....	344
Chile .....	55, 140, 345
Colombia .....	56, 141, 345



- Costa Rico.....141, 346  
 Cuba.....57, 142, 346  
 Ecuador.....57  
 Guatamala.....58, 346  
 Haiti.....58, 346  
 Honduras.....142, 347  
 Mexico.....58, 142, 347  
 Nicaragua.....59  
 Panama.....144, 347  
 Peru.....60, 348  
 Santo Domingo.....144, 348  
 Uruguay.....348  
 Venezuela.....60, 348  
 Lippmann, Walter, Public opinion, rev. by B. F. Wright, Jr.....169  
 McBain, Howard Lee and Rogers, Lindsay, The new constitutions  
 of Europe, rev. by M. W. Graham, Jr.....236  
 Maciver, R. M., Elements of social science, rev. by Jerome Dowd 367  
 Making of the reparation and economic sections of the treaty, by  
 B. M. Baruch, rev. by C. P. Patterson.....178  
 Mandamus to the chief executive of the state, by M. A. Holcomb 25  
 Mathews, John Mabry, The conduct of American foreign relations,  
 rev. by C. P. Patterson.....69  
 Merriam, Charles E., American party system, rev. by B. F.  
 Wright, Jr.....240  
 Merrill, M. H. Notes from Oklahoma.....160  
 Oklahoma legislature.....113  
 Modern city and its government, The, by W. P. Capes, rev. by  
 Clara Trenckmann.....74  
 Modern idea of the state, by H. Krabbe, rev. by B. F. Wright, Jr. 367  
 Municipal government, Handbook of, by C. M. Fassett, rev. by  
 Clara Trenckmann.....74  
 Near Eastern crisis and world politics, by M. W. Graham, Jr.....181  
 Nettleton, Tully, Philosophy of Justice Holmes on freedom of  
 speech.....287  
 New constitutions of Europe, by H. L. McBain and Lindsay  
 Rogers, rev. by M. W. Graham, Jr.....236  
 New Latin-America, by J. Warshaw, rev. by D. Y. Thomas.....358  
 New Mexico, County boundaries of, by C. F. Coan.....252  
 News and notes.....61, 145, 225, 349  
 Arkansas.....61, 159, 231  
 Oklahoma.....64, 160, 232, 351  
 Texas.....64, 353  
 News and notes, Division of Latin-American affairs.....54, 139, 343  
 Non-violent coercion, by C. M. Case, rev. by W. E. Gettys.....361

Oatman, Miriam E., Notes from Oklahoma.....	64, 232, 351
and Blachly, F. F., Everyday citizenship, rev. by M. W. Graham, Jr.....	248
Oklahoma, Elements of government with history and government of, by John Alley and F. F. Blachly, rev. by M. W. Graham, Jr.....	248
Oklahoma legislature, The, by M. H. Merrill.....	113
Pan-American conference, Fifth, by J. Warshaw.....	323
Pan-Americanism, Problems in, by S. G. Inman, rev. by H. G. James . . . . .	68
Patterson, Caleb Perry, Courts of the southwest.....	77
rev. of Baruch, Making of the reparation and economic sections of the treaty.....	176
rev. of Brunet, The German constitution.....	174
rev. of Eagle, Hope of the future.....	178
rev. of Kawakami, Japan's Pacific policy.....	175
rev. of Keynes, Revision of the treaty.....	177
rev. of Mathews, Conduct of American foreign relations.....	69
rev. of Vanderlip, What next in Europe?.....	177
Personal notes.....	66, 235, 356
Philosophy of Justice Holmes on freedom of speech, by Tully Nettleton . . . . .	287
Position of ranching in our national economy, by B. Youngblood..	16
Pound, Roscoe, Introduction to the philosophy of the law, rev. by B. F. Wright, Jr.....	367
Spirit of the common law, rev. by B. F. Wright, Jr.....	367
Presidential campaign of 1832, by S. R. Gammon, rev. by D. Y. Thomas . . . . .	250
Principles of the new economics, by L. D. Edie, rev. by W. M. W. Splawn.....	71
Problems in Pan-Americanism, by S. G. Inman, rev. by H. G. James . . . . .	68
Public opinion, by Walter Lippmann, rev. by B. F. Wright, Jr....	169
Reparation and economic sections of the treaty, Making of, by B. M. Baruch, rev. by C. P. Patterson.....	176
Revision of the treaty, by J. M. Keynes, rev. by C. P. Patterson..	177
Rippy, J. Fred, The United States and the establishment of the Republic of Brazil.....	39
Rogers, Lindsay, Howard Lee McBain and, The new constitutions of Europe, rev. by M. W. Graham, Jr.....	236
Scott, James Brown, Cases on international law, rev. by D. Y. Thomas . . . . .	251
Senatorial election, Texas, by B. F. Wright, Jr.....	225
Short book notices.....	74
Simpson, Eyler, Economic bases of crime.....	306

- Spirit of the common law, by Roscoe Pound, rev. by B. F. Wright, Jr. . . . . 367
- Splawn, W. M. W., rev. of Bradley, Story of the Santa Fe. . . . . 245
- rev. of Daggett, History of the Southern Pacific. . . . . 70
- rev. of Edie, Principles of the new economics. . . . . 71
- rev. of Kennan, E. H. Harriman, a biography. . . . . 242
- Stewart, Irvin, Constitutional amendments in Texas. . . . . 145
- ed. Division of Latin-American affairs. . . . . 39, 126, 200, 323
- Story of the Santa Fe, by G. D. Bradley, rev. by W. M. W. Splawn 245
- Tacna and Arica and the Washington conference, controversy over, by E. M. Crampton. . . . . 126
- Texas, Constitutional amendments in, by Irvin Stewart. . . . . 145
- Texas senatorial election, by B. F. Wright, Jr. . . . . 225
- Thomas, David Y., Dollar diplomacy—Leaving Mexico to herself 200
- Notes from Arkansas. . . . . 61, 159, 231
- rev. of Gammon, Presidential campaign of 1832. . . . . 250
- rev. of Scott, Cases on international law. . . . . 251
- rev. of Warshaw, New Latin-America. . . . . 358
- Trenckmann, Clara, ed. Short book notices. . . . . 74
- United States and the establishment of the Republic of Brazil, by J. F. Rippy. . . . . 39
- Vanderlip, Frank A., What next in Europe? rev. by C. P. Patterson . . . . . 177
- Warshaw, J., Fifth Pan-American conference. . . . . 323
- New Latin-America, rev. by D. Y. Thomas. . . . . 358
- What next in Europe? by F. A. Vanderlip, rev. by C. P. Patterson 177
- Wright, Benjamin Fletcher, ed. News and notes. . . . . 145, 225, 349
- Notes from Texas. . . . . 353
- Texas senatorial election. . . . . 225
- rev. of Beard, Economic basis of politics. . . . . 172
- rev. of Dowd, Democracy in America. . . . . 363
- rev. of Krabbe, Modern idea of the state. . . . . 367
- rev. of Lippmann, Public opinion. . . . . 169
- rev. of Merriam, American party system. . . . . 240
- rev. of Pound, An introduction to the philosophy of the law. . . . 367
- rev. of Pound, Spirit of the common law. . . . . 367
- Youngblood, B., Position of ranching in our national economy. . . . 16

